157-148

157-148

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 179.

THOMAS V. COOPER, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

JOHN DOBSON AND JAMES DOBSON, COPARTNERS, TRADING AS JOHN AND JAMES DOBSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED MAY 21, 1891.

(14656.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 179.

THOMAS V. COOPER, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR.

vs.

JOHN DOBSON AND JAMES DOBSON, COPARTNERS, TRADING AS JOHN AND JAMES DOBSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation and proof of service	2	1
Caption	3	2
Summons	4	2
Marshal's return	5	2
Statement of plaintiff's claim	6	3
Bill of particulars	8	3
Plea	10	4
Similiter	11	4
Verdict	12	4
Order granting rule to show cause why new trial should not be granted	14	5
Motion for new trial and reasons	15	5
Order overruling motion for new trial	17	5
Judgment	17	5
Bill of exceptions	18	6
Evidence for plaintiffs	19	6
Testimony of Edward J. Collins	19	6
Francis H. Taggart	20	6
James Dobson	21	7
John Scrivener	40	15
Joseph Truitt	61	23

	Original	Print.
Bill of exceptions—Continued.		
Evidence for plaintiffs—Continued.		
Testimony of T. C. Search	67	26
James Dobson (recalled)	76	30
Emil Scheppes	77	30
George W. Patten	80	31
Charles J. Webb	88	35
Seville Schofield	95	38
Charles J. Cole	100	40
John Henry Willey	109	44
Wm. T. Tilden	113	45
Joseph S. Lord	114	46
Carl Rubeno	115	46
T. F. Alvey	116	46
Rudolph C. Binder	118	47
Joseph C. Midgely	120	48
Evidence for defendant	121	49
Testimony of Francis H. Taggart	121	49
James G. Kitchen	131	53
Dr. Thomas Taylor	133	54
William Lawrence	137	55
Thomas Scott	144	58
Joshua Wright	146	59
Wm. A. Herriott	153	62
Robert Wylie	156	64
John McDowell	157	64
Evidence for plaintiff, in rebuttal	160	65
Testimony of James Dobson (recalled)	160	65
Colloquy between court and counsel	162	66
Charge of the court	174	70
Defendant's points disaffirmed	178	71
Judge's certificate to bill of exceptions	179	71
Clerk's certificate	180	72
Assignment of errors	181	72

1 UNITED STATES,
Eastern District of Pennsylvania, sct.:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between John Dobson and James Dobson, copartners, trading as John and James Dobson, plaintiffs, and Thomas V. Cooper, collector of customs for the district of Philadelphia, defendant in a plea of assumpsit, a manifest error has intervened to the great damage of the said Thomas V. Cooper, collector, &c., as in his complaint has been stated—and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf. You are hereby commanded that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ; so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., within thirty days, that the record and process aforesaid being inspected, they may cause to be done thereupon, what of right ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fifth day of May, A. D. one thousand eight hundred and ninety-one, and in the one hundred and fifteenth year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court U. S.

2 The United States of America, ss, to John Dobson and James Dobson, copartners, trading as John and James Dobson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Thomas V. Cooper, collector of customs for the district of Philadelphia, plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 5th day of May, in the year of our Lord one thousand eight hundred and

WM. BUTLER,
Judge.

I hereby accept service of the above certiorari on behalf of John Dobson and James Dobson, copartners, trading as John and James Dobson. May 6th, 1891.

THOMAS EARLE WHITE,
Atty. for John Dobson and James Dobson.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

JOHN DOBSON AND JAMES DOBSON, copartners, trading as John and James Dobson,
vs.
THOMAS V. COOPER, COLLECTOR OF CUSTOMS for the district of Philadelphia.
} No. 47, October sess., 1890.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable, the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit of October session, 1890, No. 47.

It is thus contained:

Be it remembered that on the 9th day of December, A. D. 1890, John Dobson and James Dobson, by their attorney, Thomas Earle White, esq., come into court here and sues forth therefrom a writ of summons against Thomas V. Cooper, collector of customs for the district of Philadelphia, which with the endorsement and return thereto is in the words and figures following, to wit:

4 UNITED STATES,
Eastern District of Pennsylvania, sct.:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

We command you, that you summon Thomas V. Cooper, collector of customs for the district of Philadelphia, late of your district, if he may be found therein, so that he be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia, on the first Monday of January next, to answer to John Dobson and James Dobson, copartners, trading as John and James Dobson, in a plea of assumpsit; and have you then there this writ.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States at Philadelphia, this 9th day of December, A. D. 1890, and in the 115th year of the independence of the United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

5 DECEMBER 11, 1890.

At Philadelphia, in my district, served the within writ on Thomas V. Cooper by giving him a true and attested copy thereof, and making known the contents of same to him.

So answers

A. H. DILL,
U. S. Marshal.
Per JAMES L. MARSHALL,
Deputy.

(Indorsed:) No. 47. Circuit court, October session, 1890. Dobson et al. vs. Cooper, collector, &c. Summons. Assumpsit returnable on the first Monday of January next. Thomas Earle White, attorney for plaintiff. Filed January 5, 1891.

6 And afterwards, to wit, on the 11th day of December, A. D. 1890, the plaintiffs by their attorney, Thomas Earle White, esq., come into court here and file their statement of plaintiffs claim and bill of particulars, which being read is as follows, to wit:

JOHN DOBSON AND JAMES DOBSON, COPARTNERS, trading as John and James Dobson,
vs.
THOMAS V. COOPER, COLLECTOR OF CUSTOMS for the district of Philadelphia.

U. S. circuit court. October sess., 1890. No. 47.

Statement of plaintiffs' claim.

In above suit the plaintiffs sue to recover from the defendant moneys paid under protest by the plaintiffs to the defendant as collector of customs for the district of Philadelphia, at the port of Philadelphia, as duties, in order to obtain possession of merchandise imported for the plaintiffs, which moneys were demanded and collected by defendant in excess of the amount of duties authorized by law. Annexed hereto and intended as part of this statement is a bill of particulars, showing the dates
7 and amounts of such payments in excess, and such other facts as are required by the act of Congress in such cases made and provided. Plaintiffs aver that there is now due and owing to them by the defendant the full amount of such payments, as shown by said bill of particulars, aggregating three hundred and seven $\frac{60}{100}$ dollars, with interest from their respective dates.

THOMAS EARLE WHITE,
Attorney for plaintiffs.

8 [Alexander Murphy & Co., custom-house broker.]

Circuit court U. S., eastern district of Pennsylvania.

JOHN & JAMES DOBSON, TRADING, &C.,
against
THOMAS V. COOPER, COLLECTOR OF CUSTOMS, &c., Philadelphia.

18

SIR: This action is brought to recover duties illegally exacted by defendant as collector of customs at the port of Philadelphia, and the following is the bill of particulars therein, viz:

Description of goods: C H D $\frac{42}{48}$, 7 bales common goat hair, 3,071 pounds.

Name of vessel: Lora Clive.

Whence imported: Liverpool.

Date of invoice, Jan. 9th, 1890.

Date of entry of custom house: Feb. 13th, 1890.

9 Date of payment of duties in excess: May 10th, 1890.

Amount of duty illegally exacted: $307.10.

Protest filed: April 11th, 1890.

Date of appeal to Secretary of the Treasury: April 11th, 1890.

Date of Secretary's decision therein, Sept. 22nd, 1890.

(Endorsed:) 47. Oct. session, 1890, U. S. circuit court. John and James Dobson, &c., vs. Thomas V. Cooper, collector of customs. Statement of plaintiffs' claim and bill of particulars. Filed December 11, 1890. Thomas Earle White, attorney for plaintiffs.

10 And afterwards, to wit: on the 28th day of February, A. D. 1891, the defendant, by his attorney, John R. Read, esq., comes into court here and files his plea, which being read is as follows, to wit:

In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit.

JOHN DOBSON ET AL. *vs.* THOMAS V. COOPER, COLL., &c. } Oct. sessions, 1890. No. 47.

And the said defendant, by John R. Read, esquire, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiffs, Jno. Dobson et al., above thereof complained against him, and of this he puts himself upon the country.

JOHN R. READ,
Attorney for defendant.

FEBRUARY 28, 1891.

11 And afterwards, to wit, on the 3rd day of March, A. D. 1891, the plaintiffs, by their attorney, Thomas Earle White, esq., come into court here and file their Similiter, which being duly read is as follows, to wit:

JOHN DOBSON ET AL. *vs.* THOMAS V. COOPER, COLLR. } C. C. U. S., Oct. sess. 1890, No. 47.

And the plaintiffs, as to the plea of the said defendant, above pleaded, and whereof they have put themselves upon the country doth the like.

THOMAS EARLE WHITE,
Attorney for plaintiffs.

MARCH 3, 1891.

(Endorsed:) 47, Oct. sess. 1890, C. C. U. S. John Dobson et al. vs. Thomas V. Cooper, Collr. Similiter. Filed March 3, 1891. Thomas Earle White, atty. for plffs.

12 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit on the 8th day of April, A. D. 1891, come the parties aforesaid, and the jurors of the jury aforesaid being called likewise come, to wit:

1. J. E. Crippin.
2. Charles B. Kline.
3. Jonathan Grubb.
4. Adam R. Barr.
5. John B. Coppenhaver.
6. C. Powell Childs.
7. George B. Kraber.
8. George Anders.
9. Charles F. Humrick.
10. Charles F. Chidsey.
11. Nathan Stember.
12. Charles F. Seeger.

Who are duly empaneled, returned, chosen, tried, and sworn or affirmed to speak the truth, &c., in the issue joined in this case.

And afterwards, to wit on the 9th day of April, A. D. 1891, the jurors aforesaid upon their oaths or affirmations aforesaid respectively, do say that they find for the plaintiffs and assess the damages at three hundred and twenty-eight $\frac{34}{100}$ dollars ($328.34).

13 And afterwards, to wit on the 13th day of April, A. D. 1891, the defendant by his attorney comes into our said court and moves the court for a new trial, and files the following reasons therefor, to wit:

14 DOBSON ET AL. *vs.* COOPER, COLLECTOR. } U. S. C. C. Oct. S., 1890. No. 47.

And now, to wit, April 13th, 1891, the court, on motion of John R. Read, esq., attorney for defendant, grants a rule upon the plaintiff to show cause why a new trial should not be granted.

15 DOBSON ET AL. *vs.* COOPER, COLLECTOR. } U. S. C. C. Oct. S., 1890. No. 47.

Motion for a new trial and reasons.

1. The learned judge erred in overruling the defendant's first point.
2. The learned judge erred in overruling the defendant's second point.
3. The learned judge erred in overruling the defendant's third point.
4. The learned judge erred in overruling the defendant's fourth point.
5. The learned judge erred in overruling the defendant's fifth point.
6. The learned judge erred in charging the jury that if they find that it is common hair as distinguished from mohair and is known as common goat or cattle hair, then the verdict should be for the plaintiff.
7. The learned judge erred in charging the jury that if they believe that the article is not known to commerce as combing hair, then your verdict should be for the plaintiff.

16 8. The verdict was against the evidence.
9. The verdict was against the weight of the evidence.
10. The verdict was against the law.

W. W. CARR,
Asst. U. S. Atty.

11 Apl., 1891.

(Endorsed:) 47. Oct. sess., 1890. U. S. circuit court. Dobson et al. vs. Cooper, coll., &c. Motion and reasons for new trial. John R. Read, U. S. atty.

17 And afterwards, to wit, on the 13th day of April, A. D. 1891, come the parties aforesaid, by their attorneys aforesaid, and this cause being called for argument on motion for a new trial, and having been argued by counsel for the respective parties, and the court being fully advised in the premises, it is ordered that the motion for a new trial be and the same is hereby denied, and that judgment be entered on the verdict in favor of plaintiffs and against the defendant.

Whereupon judgment is entered accordingly.

18 In the circuit court of the United States for the eastern district of Pennsylvania, of October sessions, 1890, No. 47.

DOBSON ET AL., *vs.* COOPER, COLLECTOR. } U. S. C. C. October 7, 1890. No. 47.

Be it remembered, that in the said term of October, A. D. 1890, came the said plaintiff into the said court, and impleaded the said defendant in a certain plea of trespass on the case, &c., in which the said plaintiff declared (prout narr.) and the said defendant pleaded (prout pleas.). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the honorable William Butler, judge of the said court, on the ninth day of April, A. D. 1891, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly empannelled (prout list of jurors), at which day came as well the said plaintiffs as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid empannelled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial the counsel of the said defendant, having opened the cause for the Government, offered the following testimony:

19 DOBSON ET AL. *vs.* COOPER, COLLECTOR, ETC. } Oct. term, 1890. No. 47. U. S. C. C. Butler, J.

WEDNESDAY, *April* 8, 1891.

Present: Thomas Earle White, esq., and R. P. White, esq., for plaintiff; John R. Read, esq., U. S. attorney, and W. W. Carr, esq., assistant U. S. attorney, for the Government.

EDWARD J. COLLINS, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your position?

A. Clerk in the custom-house.

Q. (Papers handed witness.) Please examine those papers and tell us what they are.

A. It is an entry of John and James Dobson of seven bales, described in the entries common goat hair.

Q. Were the entries liquidated and the protest duly made in the case?

A. Yes, sir.

20 Cross-examination by the DISTRICT ATTORNEY:

Q. What was the invoice description of the goods?

A. White cattle hair.

Q. What was the protest?

A. Common goat hair. They called it common goat hair in the protest.

Q. And the return of the appraiser was what?
A. Angora goat hair; as hair in class 2.
Q. What was the price as shown by the papers?
A. It was under thirty cents a pound.
Q. The tax imposed was ten cents a pound?
A. Ten cents; yes, sir.

FRANCIS H. TAGGART, having been duly sworn, was examined, as follows:

By Mr. WHITE:

Q. What is your business in the Government service?
A. Examiner.
Q. Have you brought these samples with you? [Samples handed witness.]
A. Yes, sir.
Q. What are they?
21 A. No. 43 is Lincolnshire wool and No. 53 is China cashmere.
Q. State what the others are.
A. No. 58 is Peru alpaca, No. 59 is mohair noils, No. 50 Canada fleeces, and No. 55 Turkey mohair. The sample in dispute is not numbered. That is the sample in dispute. These samples that I have called out the numbers of are class 2 wool.
Q. Those are all the samples provided by the Government for No. 2 wools?
A. Not all. Not near all. But these represent the alpaca, cashmere, Lincolnshire, Canada fleece, and the wools that I have named under class 2.
Q. Those include the Angora?
A. Yes, sir.

JAMES DOBSON, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your firm and business?
A. John & James Dobson. We are manufacturers of woolen goods and silk goods.
Q. How long have you been in the business?
22 A. Between thirty and forty years.
Q. I believe you are about the largest establishment in this State?
A. Yes, sir.
Q. Have you had experience during all that time in handling wool and hair, and manufacturing it, and purchasing and selling it?
A. Yes, sir.
Q. You imported the article which is in dispute here. Are those samples of it? [Handing samples to witness.]
A. Yes, sir; these are samples.
Q. Drawn from the lot in dispute?
A. Yes, sir.
Q. Which are taxed at ten cents a pound?
A. Yes, sir.

Q. How long have you been familiar with that article?

A. Over twenty years.

Q. What has been your experience in it? I mean, to what extent have you bought, sold, imported, or used it?

A. We have not used it very largely until these last few years pastl Of course, our experience. We came in contact with it nearly daily; woo. brokers and hair dealers were sending it in to us as samples of what they wanted to sell.

23 Q. So that you are perfectly familiar with it?

A. Yes, sir.

Q. Is this lot of a larger lot which you contracted for and imported?

A. Yes, sir.

Q. Please state what that article is.

A. This is common goat hair—common white goat hair.

Q. You are familiar with the goods which have been imported under No. 2?

A. Yes, sir.

Q. What is the difference between those goods?

A. All the difference in the world. One is a long fibre of wool or hair suitable for combing purposes, and this is not suitable for combing purposes.

Q. Why?

A. Because it is too short and brittle and tender.

Q. Have you any samples of the Angora wool here?

A. Yes, sir. [Samples produced.] This is the Angora; it is a long, silky fibre. [Witness exhibited Angora wool to jury.]

Q. During the last twenty years that you have spoken of that you have been handling these goods, has that been an article commonly used and known in the market? I refer to the importation that is in dispute.

24 A. Yes, sir.

Q. Under what name and what commercial designation?

A. Goat hair, common goat hair or cattle hair.

Q. Both names used to distinguish it?

A. Yes, sir; the younger goats they call the kid hair.

Q. Have you ever heard any other commercial designation for it than goats' hair or cattle?

A. Yes, sir; sometimes they call it the French term, cheverette.

Q. In this market the common designation is common goats' hair or cattle hair?

A. Yes, sir. Cheverette, I think, in the French is the meaning of common goat. I am not a French scholar and do not know.

Cross-examination by the DISTRICT ATTORNEY:

Q. How long have you been dealing in the article that is represented by the sample in suit?

A. We exported this hair from the United States to Great Britain in 1863.

Q. When did you commence to import it from the other side?

25 A. I think the first importation was somewheres in the eighties.

Q. How long did you continue to import it?

A. I could not tell you.

Q. You commenced to import it in quantities since the passage of the tariff act of 1883, did you not?

A. Not in large quantities. We only bought fifteen tons of it.

Q. You commenced to import it as a commodity and dealt in it since the passage of the tariff act of 1883, did you not?

A. Yes, sir.

Q. You did not do it before, did you?

A. No, sir; but we bought it here from other importers or makers of it.

Q. The sample of Angora that you produced, what do you call that?

A. This is Angora or mohair.

Q. Angora what?

A. Angora goat or mohair.

Q. What is it called in trade?

A. Mohair.

Q. What is mohair?

A. It is the fleece from the Angora goat.

Q. What is the difference between that and wool?

26 A. The difference between hair and wool is in the construction of the fibre. The hair is the straight fibre and the wool is not straight. It is full of little embrasures or serrations all through.

Q You mean the outer edges?

A. Yes, sir.

Q. What is the difference between the interior structure of the wool and the hair?

A. I never looked at it inside.

Q. Did you examine it?

A. Yes, sir; under the microscope.

Q. What is the difference?

A. I never split a hair to look inside of it. I never looked inside of a fibre of hair or wool either.

Q. Have you ever examined it under a microscope?

A. Yes, sir; the hair as it is here.

Q. The Angora hair?

A. Yes, sir.

Q. Have you ever examined wool under a microscope?

A. Yes, sir.

Q. What is the difference between the interior structure of the Angora goat hair and the wool?

A. The goat hair is a straighter fibre than the wool. There are

27 little barbs on the fibre of the wool; little sharp barbs all the way through, and the hair is free to a large extent of the barbs.

Q. You mean now as to the outer edge?

A. Yes, sir.

Q. That is the only examination that you have ever made?

A. Yes, sir; that is the only one.

Q. And that is the only difference you have observed?

A. That and the feel of it.

Q. Is there a sample of mohair noils among the bundles produced by the Government officer?

A. Mr. Taggart said so. Of course I have not examined them.

Q. You can tell by looking at them?

A. If I am permitted to do it. (Looking at samples.) This is the long English wool; this is the alpaca. These are supposed to be noils; but I do not think they are pure. (Referring to No. 56.) I do not think they are pure mohair; I think they are a mixture of mohair and wool. That is my judgment. Of course I could not tell except under a microscope.

By the COURT:

Q. What does noil signify?

A. After they have taken the long wool out of this fleece by a
28 process of manufacture the noils is the short fibre of the residue.

Q. After taking out what?

A. The long fibre. You can not make noil unless you have long fibre wool to make it from or wool of sufficient fibre to make it from.

By the DISTRICT ATTORNEY:

Q. The mohair noil comes from the manipulation of the Angora hair, does it?

A. Yes, sir.

Q. For what purpose are mohair noils used?

A. For a variety of purposes. They used to use them largely for making carpets when they were admitted free a little while ago, or admitted not free, but under the carpet schedule, class 3. They used them for making robes, travelling robes, and in many cases as a substitute for wool.

Q. And it is the same as to the hair and alpaca?

A. No, sir; I am speaking now of noils. When you speak of alpaca, that is a different thing.

Q. Do you comb the mohair noils?

A. No, sir.

Q. You have imported a great many mohair noils, have you not?

A. Never a pound to my knowledge.

Q. They are imported into this country?

29 A. They were prior to the passage of the last act largely.

Q. Do you know as matter of fact how mohair noils have been classified?

A. Yes, sir.

Q. Has the classification generally been accepted by the wool trade?

A. They have been classified under class 3, and then they have been classified under class 2.

Q. Which you say cannot be combed.

A. They have already been combed.

Q. I am speaking of noils. The noils is the result of manipulation of the Angora hair?

A. Yes, sir.

Q. And noils as noils cannot be combed?

A. They have already been combed. They are the residue.

Q. The residue cannot be combed, can it?

A. No; because all the long wool is taken from it.

Q. The mohair noils, as I understand you, have been imported largely into this country; they have been classified under class 2, wools. That classification has been generally accepted by the wool trade, has it not?

30 A. No; it was accepted by the wool trade as under class 3. Since they have got to class 2 there have been very few imported.

Q. Do you know of a single protest or appeal as to that classification of mohair noils in class 2?

A. I do not.

Q. For what do you use the article in suit? To what uses do you put it?

A. We have used it for carpet yarns as an adulterant for wool, and we also use it for the manufacture of robes as adulterant for wool.

Q. For what kind of wool do you use it as a substitute?

A. Class 3.

Q. You use it as a substitute for class 3 carpet wools?

A. Yes, sir.

Q. How is it used?

A. Like all other class 3 wools.

Q. Please describe the process of using it; how it enters into the fabric?

A. First it is taken and washed; it is dried; it then goes into the mixing, where they mix the different proportions of wool and hair, whatever you want to make—you make your proportions and mix it all up
31 together—then it goes through the picker, from the picker on to cards, from the cards it goes on to the condenser, from the condenser it goes on to the mule, and from the mule it is spun.

Q. Do you put the article you have imported in with the wool?

A. Yes, sir.

Q. Do you put that all into the carding machine?

A. Yes, sir; it is mixed before it goes to the carding machine.

Q. What is the next instrument after the carding machine that it goes into?

A. It goes from the condenser, that is a carding machine; from the condenser on to the mule, where it is spun into yarn.

Q. With what kind of wool do you mix it?

A. Class 3.

Q. The Angora goat hair that you have here has been clipped from the goat while alive, has it not?

A. Yes, sir.

Q. The sample of the subject of this suit, has that been picked from the goat while alive?

A. No; it has been pulled from the skin.

Q. It has gone through the process of liming, has it not?

32 A. Yes, sir; this has been limed and pulled.

Q. That is to say, it is pulled off of the skin after the death of the goat?

A. Yes, sir.

By the COURT:

Q. Is that Angora goat hair?

A. No, sir.

Q. You say the sample in this case is not Angora goat hair?

A. I do; yes, sir. I say that it is the common goat hair.

By the DISTRICT ATTORNEY:

Q. What is the difference between that and the Angora goat hair?

A. This is a coarser fiber, shorter, and not at all adapted for what the Angora goat hair is. It can not be worked on the same machine.

Q. Is it adapted to the same purposes as to which mohair noils are?

A. Practically; yes, sir.

Q. The mohair noils that you have examined and which have been produced by the Government have not, however, been limed, have they?

A. No, sir.

Q. And therefore they have the oily feeling that wool or hair
33 naturally has that is taken from the live animal, have they not?

A. Yes, sir. But you need only look at the fiber itself to show you how coarse it is.

Q. The difference between the subject of this suit and the mohair noils is, first, the one has been taken from the dead animal and the other has been taken from the live animal?

A. Not necessarily so.

Q. Is it not so?

A. Not necessarily so.

Q. Can you tell by the feel?

A. No, sir; because there is pulled mohair as there is this.

Q. I am speaking of the mohair noils you have before you, which you say are the product of the manipulation of the hair of the Angora goat.

A. You are asking me a question that I or no other living man can answer unless they see the mohair before it was combed. There is pulled wool and pulled Angora hair, just the same as there is fleece, and if it is pulled of course the noils come out, just the same as if it is taken from the fleece.

Q. What is the difference between the mohair noils which you have in your hands which are produced by the Government on your subpœna.

34 A. Very material.

Q. What is it?

A. These are much finer, much more valuable, and would not be used for the same purpose and not to the same extent they would this, because they would not take that to cheapen this with, but they would take this to cheapen that. [Exhibiting.]

Q. How is the quality of the article in suit affected by the liming process? Is it deteriorated or increased in value?

A. Anything that is limed is deteriorated in value, but where you do not have to comb it, of course it practically makes no difference.

Q. Then so far as the working of the articles are concerned, the one is as good as the other?

A. Yes, sir; on the machinery which they are adapted to be worked on.

Q. How are you able to say that that is common goat hair?

A. From its general appearance, and from the skins from which it is taken. Here are the type of skins from which the hair is taken. [Producing skins.]

35 Q. You have no samples there of what is known to the trade as common goat hair?

A. Yes; this is known to the trade as common goat hair. [Indicating.]

Q. Any other article known to the trade as common goat hair?

A. Not here I have not got them.

Q. Do you know of any other?

A. Oh, yes, there is coarser and there is finer than this.

Q. Are they used for the same purpose?
A. For the same purpose; yes, sir.
Q. And those purposes are the making of textile fabrics?
A. As a substitute for class 3 wool; as an adulterant for class 3 wool.
Q. What do you mean by the word adulterant?
A. To cheapen.
Q. To cheapen the price of the carpet?
A. Cheapen the product.
Q. What do you call this? [Indicating sample.]
A. That is cattle hair; there might be some goat in it and might be some cow; might be both.
Q. What is that known in your trade as?
A. Cattle hair; cattle or cheverette hair.
36 (Sample referred to by witness is marked Defendant No. 1.)
Q. What is that used for?
A. Just for the same purpose as this, for carpet purposes or for robes. I only want to say, to make a difference, where they have dark hair it goes, in dyeing, to the dark colors, and where it is lighter it goes into the light colors.
Q. Is there any difference between the physical structure of this sample, defendant's sample No. 1, which is this brown goat hair, and the sample at issue in this suit?
A. I can not say, for I have not examined it.
Q. Can not you say by an examination of it?
A. I can only say that is coarser than this. [Indicating.]
Q. If you were told that there was no difference in the physical structure of the sample in this suit and mohair noils, would you still adhere to your statement that the sample in this suit is common goat hair?
A. I should, because that is the general term.
Q. Independent of race or blood?
A. Yes, sir.
Q. In wools?
A. In this class; in this particular fabric or particular hair.
37 Q. Made since 1883?
A. Made since that and prior to that.

By Mr. WHITE:

Q. You have been asked about the trade, &c., accepting the classing of the mohair noils; what has the trade accepted this as, what has it been classified at heretofore, and what has it been recognized as among the trade?
(Objected to by Mr. Read.)
Q. Mr. Dobson, up until this time what has been the acceptance of the trade——
(Mr. Read objects to the form of the question.)
Q. What has it been?
A. Common goat hair.
Q. How many importations have you made of it before this?
A. I think six or seven importations.
Q. Of that particular lot?
A. Yes, sir.
Q. What was it invoiced at and passed at by the Government officers?

(Objected to by Mr. Read. Objection overruled. Exception noted for Mr. Read.)

A. Class 3; invoiced as cattle or goat hair.

By the COURT:

38 Q. You say you imported how many invoices or importations of it?

A. Six besides this one; this is the seventh importation of this particular lot.

By Mr. READ:

Q. As goat or cow hair?

A. Goat or cattle hair.

By Mr. WHITE:

Q. And, therefore free?

A. Yes, sir.

Q. In all the time you have been dealing in this, before this particular lot did you ever know it classed as anything else?

A. No, sir.

By the COURT:

Q. Until you came to this particular importation?

A. Until this importation, yes, sir. I may state here that we purchased about 130,000 lbs.—somewhere about that—that came through this custom-house here within a year, similar hair, and this passed through this custom-house—I should say, probably 100,000 lbs.—within a year passed through this custom-house and the New York custom-home free.

By Mr. READ:

Q. Were the six importations that you speak of invoiced as goat or cattle hair?

39 A. Both.

Q. Invoiced as both?

A. Yes, sir. Looking at the invoice I see some invoices goat hair and some cattle?

Q. Were they called by the two terms on the same invoices?

A. No, sir.

Q. Then in some invoices they were characterized as cattle hair and in others as goat hair, were they?

A. Yes.

Q. That is the fact?

A. I believe the papers show that.

Q. I would like to know as a matter of fact which way it was.

A. The papers show that.

Q. Was there any difference in the commodities?

A. Not a particle of difference.

Q. Was the same thing—one invoice as cattle hair and one invoice as goat hair.

A. Precisely.

By Mr. WHITE.

Q. Known by both terms and by both names to the trade?

A. Yes, sir.

40 JOHN SCRIVENER, sworn.

By Mr. WHITE:

Q. Where do you live?

A. Bradford.

Q. Bradford, England?

A. Yes, sir.

Q. You happen to be here temporarily on business?

A. Yes, sir.

Q. What is your business?

A. My business at present is a commission merchant to handle all this stock or anything you want into this country.

Q. You mean manufacturing stock, wools, mohairs, and Angora goat, and all of that sort of stock?

A. Yes.

Q. How long have you been familiar with those goods?

A. Thirty-five years.

Q. I think you represented the English Government as the judge of those goods in the London Exposition?

A. I was one of the jurors in the Crystal Palace Exposition.

Q. For awarding the prizes?

A. In awarding the medals.

Q. Will you be good enough to look at the samples in that paper before you. You have seen them, I think?

A. Yes, I have seen those.

41 Q. Are you familiar with those goods?

A. Yes.

Q. What are they?

A. This [indicating] is what we commonly call goat hair or cow hair, as the case may be. This [indicating] is off the Angora goat.

Q. You handle a great deal of the mohair?

A. I do.

Q. And Angora goat?

A. Yes.

Q. Is there any difficulty in distinguishing the two articles?

A. Yes, certainly. No difficulty in distinguishing this from that.

Q. I asked you whether there was any difficulty, and you said yes, certainly.

A. I misunderstood you.

Q. Those samples of Mr. Dobson's of the importation in question are goat hair, you say, and the fleece that is under your hand is Angora hair?

A. Yes.

Q. How long have you been handling or had experience in both of those articles?

A. Over thirty years.

42 Cross-examined by the DISTRICT ATTORNEY:

Q. Are you in business for yourself?

A. I am.

Q. What is your business?

A. Commission merchant.

Q. To whom do you sell, generally speaking—I do not mean the individuals; do you sell to the English manufacturers or do you sell to the American manufacturers?

A. I sell to both.

Q. And in your capacity as a commission merchant do you handle all kinds of wools?

A. I do.

Q. And hair?

A. And hair.

Q. What is the difference between a mohair noil and the Dobson sample of the article in suit that you have before you?

A. There is a very great difference in the working up.

Q. What do you mean by the "working up?"

A. When you produce a cloth out of this [indicating] it won't be the same if you produced a cloth out of the mohair noils.

43 Q. Why?

A. It will be deader and duller.

Q. Any other difference?

A. I can scarcely tell you the difference now.

Q. You have had an experience of thirty years, and I do not know of any man who ought to be able to do it better.

A. How do you wish me to describe it?

Q. Just as it occurs to you. I ask you to describe the difference between the two, and you have answered me by saying that the fabric made from the Dobson sample in suit and the mohair noils would, in the Dobson case, be duller than the other. Is that not so?

A. Yes.

Q. What other difference?

A. From an American point?

Q. I mean from an English point, if you please; what is the difference?

A. Supposing——

Q. Just deal with the facts as you have them before you.

A. Suppose I produce a cloth from this, and another from the noils, and when it is made into a rope or carpet you might know the difference if you were an expert. If your wife went into the store she would

44 not probably know difference between the two cloths, and she would probably buy one for the other.

Q. Is that the reason it is used in place of the other?

A. I should think it is.

Q. The mohair sample, at least the Dobson sample that you have before you, is used in the place of the mohair noils because the consumer may be deceived?

A. I did not say so.

Q. Is not that the effect of what you said?

A. Yes, sir.

Q. Is there any other difference than that which you have described between the two, just as you have the sample in this suit?

By the COURT:

Q. What are the distinguishing characteristics?

A. If you had them, as I said before, worked up together——

Q. If we had not them worked up together, but as we have them there?

A. An expert would soon know the difference between the two.

By the DISTRICT ATTORNEY:

Q. You are simple wanted to state how he would know; take the characteristics.

45 A. I understand this is a pulled fibre, which, in consequence of the action of the lime, it has tendered it very considerable, been pulled from the skin. If you give me a mohair noil that has not been pulled from the skin, and if you look at it together, you can easily distinguish the difference. If you work them into cloth or make a thread of them it will be difficult for me to distinguish one thread from the other.

Q. Then the difference between the two, that is, between the mohair noils and the Dobson samples that you have before you, is caused from the fact that the Dobson samples are what you call pulled from the skin after the death of the animal.

A. I don't say anything of the kind.

Q. Then I misunderstood you. What did you say?

A. I said—you asked me to distinguish a noil from a pulled wool.

Q. The two you have before you.

A. The two I have before me?

The COURT. Distinguish one of those from the other. Looking at them just as they are in their present condition, how do you distinguish the one from the other, and so on?

A. I was describing to you—this is a tender, hard wool, this skin—I call it a skin or hair—and the other might be rather different. It is silkier, softer.

46 Q. That is the mohair?

A. If you show me those in the dark I would tell you the difference directly by touching them.

Q. Is not that difference caused by the way in which they are taken from the sheep—the one pulled from the skin after the death of the animal and the other clipped while alive?

A. If you ask me that question, I must first ask you to let me have the two skins, and I will clip the hair off of one skin, and I will take the hair off of the other skin with lime; then I have two articles treated differently.

Q. I do not pretend to have the experience you have had, and I have asked you several times the difference between the mohair noils and the Dobson samples that you have before you, is not caused from the fact that they are taken from the skin by different processes?

A. Certainly not; because in the first place they are different.

Q. What are the differences?

A. You take two skins, and you clip the skins with the shears and you take the other off with lime; then you have the difference.

By the COURT:

Q. You have before you now two samples, one consisting of what you say is common goat hair, and you have another sample consisting of

47 mohair; now, you are asked to described the distinguishing differences between those two samples, just as you have them before you.

Can you do that? You are wanted to state how you distinguish the mohair, which is there, from the other sample.

A. If you ask me, I can only tell you from experience I know the two articles. If you ask me to distinguish between straw and hair, I will tell you it is the same way. To me there is just so much difference.

By the DISTRICT ATTORNEY:

Q. Are you able to give any other explanation than you have of the difference between the two?

A. No, sir.

Q. Do you deal in the Dobson samples to any great extent?

A. In these [indicating] largely.

Q. In those on your right? The Dobson samples, we call those.

A. Yes.

Q. To whom do you sell them?

A. That is my business.

Q. But I want you to answer me. I do not mean the individual.

A. I sell them to this country.

Q. Do you sell them at all to English manufacturers?

A. Yes.

48 Q. To what extent?

A. Not largely.

Q. What proportion of the sales of that commodity made by you are made to the English manufacturers?

A. I can not say.

Q. About?

A. I can not tell you.

Q. What is your best recollection?

A. I can not tell.

Q. Do you mean to say you have no knowledge on the subject; no judgment at all?

A. No.

Q. Can you explain why that commodity which is used by the manufacturers of textile fabrics in this country, as testified to by Mr. Dobson, is not used to any extent by the English manufacturers?

A. I think it is used largely by the English manufacturers.

Q. The samples in front of you, the Dobson samples?

A. Yes.

Q. For what purpose?

A. The same purpose as here, robes, carpet yarns, low carpet yarn, and robes.

Q. Do you sell any of it?

A. Yes.

49 Q. What proportion of the sales made by you are made to the English manufacturers?

A. I can not say.

Q. Why can not you say?

A. I do not feel disposed to tell you.

By the COURT:

Q. If you know, you must tell. You are not required to tell exactly, but you can form a judgment.

A. If you will ask me, I really can not tell.

By the DISTRICT ATTORNEY:

Q. You say you can not form a judgment?

A. I scarcely know how the question is put.

Q. I asked you whether you sold large quantities of the commodity like the Dobson sample in front of you and you said, yes; and you said you sold a very small proportion to the English manufacturers. I asked you why, and you said you would not tell, at first.

A. I will answer you now. I do not happen to be in that particular line. I have my hands filled with other things.

Q. What do you mean by that?

A. That is to say, I have other articles which pay me better than that.

Q. Where does that article come from, do you know?

50 A. I can not tell.

Q. Have not you any knowledge on the subject?

A. Yes. We get it from the continent; get it from Africa; get it from all over.

Q. What do you call it in England when you sell it to English people?

A. We sell it there as cow hair, calf hair, or goat hair, as the case may be.

Q. And any other term?

A. No.

Q. The rough feeling or harsh feeling that this Dobson sample has is caused by the process by which it is taken from the skin, is it not?

A. To a very great extent.

Q. Is it caused by anything else than that?

A. The nature of the thing is harsh and hard and *it* is not improved by the lime.

Q. Did you ever see the wool of the sheep of either Lincolnshire, the Leicestershire, the Canada combing wool, long wools, or any other of the English combing wools that were limed?

A. Certainly.

Q. Have not they precisely the same feel?

A. It makes them harder, but not to that extent.

51 Q. Have not they that feel that article has to it?

A. No.

Q. What is the difference?

A. You can take wool off by some process or other so as not to be so hard.

Q. I am speaking of the English wool (you are familiar with them all, I have no doubt), that is taken from the skin by the lime process. Has not it precisely that harsh feeling the Dobson sample has?

A. Certainly not. It is harder than taken off with the shears. It might be a trifle harder than the fleece. It would never deteriorate to this hardness or come to this hardness you have there.

(Sample marked Defendant No. 1 shown witness.)

Q. What do you call this in England?

A. Low goat hair.

Q. What is it used for?

A. For a thousand purposes; low carpet yarns.

Q. Then they are all used for the purpose of making textile fabrics?

A. Yes, sir.

Q. And they take the place of wool, do they?
A. And cotton.
Q. Is that used much in England?
A. Yes.

52 Q. You were a juror in some national exhibition, I think you stated. When was that?
A. 1881.
Q. What commodities did you examine as a juror?
A. The Australian wool, English wool, etc.
Q. Did you examine the hairs?
A. Yes; hairs were there; not to a very great extent.
Q. Did you examine the Angora-goat hair?
A. Yes.
Q. The mohairs?
A. Same thing.
Q. The mohair noils?
A. Yes.
Q. You did examine the mohair noils?
A. I did.
Q. Did you examine the hairs of the various goats?
A. Yes.
Q. Why?
A. Because they were there for me to examine.
Q. In the same classes?
A. Yes.
Q. Did you examine them under a microscope?
A. No, sir.

53 Q. Did you ever examine the hair of the Angora goat under a microscope?
A. Yes.
Q. Did you examine the mohair noil under a microscope?
A. Yes.
Q. Did you ever examine common goat hair under a microscope?
A. Yes.
Q. Did you ever examine the Dobson samples under a microscope?
A. No.
Q. If you were told, as a matter of fact, that there was no difference between the physical structure of the Angora-goat hair or mohair noil and the Dobson sample, but a vast difference between those two and the common goat hair and the hair of the mountain goat, would you still persist in saying that the Dobson was not Angora-goat hair?
(Objected to by Mr. White. Objection sustained. Exception noted for the district attorney.)
Q. In this wool—what do you call this, wool or hair?
A. Mohair.
Q. You call that mohair, do you?
A. Yes, sir.
Q. Why do you call it mohair?
A. I don't know.

54 Q. That is the commercial name?
A. It is off the mohair goat, the Angora goat, and we call it mohair; why, I can not tell.

Q. How is that taken from the animal, by the clipping process?

A. Just in the ordinary way.

Q. That is the clipping process?

A. Yes; the shears.

Q. If that had been taken from the animal by the liming process after death, would it present any different appearance from what it does now?

A. Why, certainly.

Q. And what would be the difference between the appearance that it presents and the Dobson samples that you have before you?

A. You take off this, or, in other words, when this comes off [indicating] you pull off the wool; you pull it off and there will be some of the skin come with it; that is, it will come with the wool. After having gone under the process of dipping and washing, you could scarcely expect it to come out as soft and silky as it is in its natural state.

Q. What do you call that part of the hair of the goat that is nearest the skin?

A. The bottom of the staple.

55 Q. If that is taken from the skin by the liming process, what is the difference between the bottom of the staple, so called, and the Dobson sample taken from the Angora goat?

A. They do not compare at all. How can you compare this rubbish [indicating] to this beautiful, long stuff, and you ask me to take it off and then compare the two staples.

Q. I am not asking you to compare that with the long fleece, but with that part of the wool which is close to the skin.

A. That part of the wool which is close to the skin is close to the stable. To be sure, if the staple is 12 inches long, you will be at the bottom of it.

Q. What would be the difference between that and the other part of it; would it be shorter?

A. How can it be shorter when it is all one pole, all one stick?

A. How would the hair differ from that before you if it had been taken off by the liming process?

A. It would not be so bright; it would be dull.

Q. Would it be just as long?

A. Just as long.

Q. Any difference?

A. Not the slightest.

Q. Are you sure of that?

A. Positive.

56 Q. Do not you know that the hair of the sheep or the hair of the goat is furzy near the skin; do not you know that?

A. I do not know that this hair is furzy near the skin.

Q. I am asking you from general knowledge and experience whether that is not the fact.

A. It is not the fact under certain qualifications.

Q. What are the qualifications?

A. You maintain that goat—you maintain that goat from the time it was born, you maintain that staple right up; but if you pine that goat in the winter, the hair will become what you speak of, furzy, short, and tender, and hence you have the noil.

Q. And that is not as valuable as the other, is it?

A. Certainly not.

By Mr. WHITE:

Q. I do not think you understand Mr. Read in one thing. Is that a common goatskin?

(Skin shown witness.)

A. That is a common goatskin.

(Another skin shown witness.)

Q. And that?

A. That is ditto.

Q. That has been limed, has it?

A. No, sir; it is cured.

Q. Is that and this [indicating] the same article or not?

57 A. I would not say that; I should think it is the same.

Q. Does it belong to the same family?

A. Same family, yes.

Q. Now this is not limed. Is there any difference between that unlimed goat hair and this Angora goat hair?

A. There is not much difference in a sense; but it is the same wool on the goat, and the other on the sheep here. [Indicating.]

Q. There is no difficulty in distinguishing which was goat hair and which was Angora hair?

A. Certainly not.

Q. So that whilst you find it difficult to explain what the difference is, you can see it and feel it?

A. That is it.

By the DISTRICT ATTORNEY:

[Skin shown witness.]

Q. You say that is the skin of the goat, do you?

A. Yes.

Q. You said so to Mr. White, did you not?

A. Yes.

Q. Have you ever dealt in pelts?

A. No.

Q. Did you ever buy skins in that condition?

A. No.

Q. You have always bought wool off of the skin?

58 A. Yes.

Q. What experience have you had in handling skins?

A. None.

Q. Do you mean to say that the Dibson sample came off of the animal alive?

A. No; it might, though.

[Witness shown sample marked Defendant No. 1.]

Q. I ask you as to whether the short end of the staple taken from the goat or any other animal, and subjected to the liming process, would not present the same characteristics that the Dobson sample does, and I understand you to say that there is no difference?

A. Right.

Q. Will you please look at this?

A. Yes; at the same time if you will allow me to look at the other.

Q. What is that?

[Witness illustrates by cutting samples.]

By the COURT:

Q. It is the difference in the length of the fibre?

A. Yes; is a differently constituted animal altogether, this creature here. This is a long hair to protect the rain, which is made by a Great Architect to shed the rain off of the goat when it is raining. At the bottom of the staple there comes a soft hair, which is to protect it
59 in . That is the common goat. Hybrids, the Angora, is in a different description altogether. It will grow the same fibre throughout the whole year if you will only maintain it, but if you pine that animal, the moment it is pined the staple will perish, and hence the furzy hair, which the gentleman asks me to describe, comes. This, as I said before, is the common hair, and that is undoubtedly formed here to protect it for warmth and this against the rain. You ask me if this is pulled off why it does not throw out the same short furzy staple. Because it is not in the fleece to throw it out.

By the DISTRICT ATTORNEY:

Q. But take the fleece of a sheep or the fleece of the Angora goat and taking from it that short staple that you speak of that is found nearest the skin, and subject them to the liming process just the same as the Dobson samples have, would not they present the same appearance?

A. No.

Q. What do you call that?

A. From so small a sample, I can not say. I should say it is a goat of some description.

Q. What do you call that part of the staple [indicating]?

A. I call that the bottom of the staple.

Q. Has it any other name?

60 A. No. If you comb it out then you convert it into a noil; if you take the long staple out, which is called the top.

Q. What do you call the short end of the staple in the Angora goat or in the sheep?

A. Noils; if you convert it into a noil.

Q. What do you call it?

A. I call it a part of the fleece; but the moment you comb it or separate the long from the short, then you create what is called noil.

Q. Then in point of fact, the noil from the manipulation of the hair of the Angora goat, or the wool of the sheep, presents the same characteristics as this does; is that so?

A. Yes; to a certain extent.

Q. And that is taken from this skin?

A. That is it.

By Mr. WHITE:

Q. That is to say, they are both short?

A. Both short.

Q. But you do not mean to say that they are the same in other respects, that there is any difficulty in telling the difference between the Angora wool and the short hair of the goat?

A. No; there is no difficulty.

Q. Both contain short hairs?

61 A. Yes.

By the DISTRICT ATTORNEY:

Q. Do you mean to say that the long hair in the sheep, or in the Angora goat, or in the mountain goat, is an extension of the short hair?

A. No, sir; it is not an extension.

Q. They are entirely different?

A. It is a creation.

Q. And they are different?

A. Yes.

Q. The short hair is found nearer the skin?

A. Yes.

By Mr. WHITE:

Q. And the Angora goat, as I understand it, properly kept has no short hairs at all, is all long fibre?

A. Properly kept.

JOSEPH TRUITT, sworn.

By Mr. WHITE:

Q. What is your business?

A. I am a manufacturer.

Q. What is your firm?

62 A. Thomas Dolan & Co.

Q. How long have you been engaged in handling fibers of the character before you?

A. This class of stock, about 15 or 20 years.

Q. Have you had a very large experience during that time?

A. I use it for making filling for carpets; I suppose we have a considerable large trade in that class of yarn.

Q. You are speaking of that Dobson sample in the paper?

A. This one I have before me; the time I made the remark; the Dobson sample.

Q. Then you have been using goods of the character of the Dobson sample for 20 years, you say?

A. I think about that.

Q. And using them for what?

A. Making filling for carpet yarns; for carpet filling, I mean.

Q. What is the trade name of that article?

A. The general name is hair; cattle hair or goat hair.

Q. Is there any other name known to the trade than cattle or goat hair?

A. It would come under the general name of cattle hair. Goat hair, I should call that.

Q. Chiverette?

63 A. Yes, some do call it chiverette. Chiverette is a little shorter article than that.

Q. Chiverette is the French for kid?

A. Ordinary goat hair, I should call it.

Q. Have you ever known that article classed as anything else except goat or cattle hair?

A. No, sir; not to my knowledge.

Q. Have you ever paid duty on it?

A. I never imported it direct. I generally bought it through brokers or importers.

Q. Have you ever known it to have duty paid on it?

A. Not as long as I can recollect. My knowledge is that has always been classified as free.

(Objected to by the district attorney unless the witness knows of his own knowledge.)

Q. You know how it is classed?

A. I know very well. I mean I never paid duty myself.

By the COURT:

Q. Is that the name by which it is known to the trade, cattle or goat hair?

A. Goat hair.

Q. Known to the trade as goat hair?

A. Yes, sir.

64 Cross-examination by the DISTRICT ATTORNEY:

Q. What kind of goat hair is it?

A. I should call it common goat hair; ordinary goat hair.

Q. Is there any difference between ordinary and common goat hair?

A. No, sir; I mean general goat hair; anything except what is classified as Angora hair.

Q. Anything except Angora?

A. Yes, sir.

Q. What do you call this?

(Witness shown sample marked "Defendant No. 1.")

A. That is a mixture, I should say, of goat hair and other things put together; pretty hard to tell what was in that.

Q. What is that used for?

A. Generally used for gray filling, in making common grades, low grades.

Q. Do mohair noils vary in quality?

A. No: not strict mohair noils. They are sometimes mixed with worsted and wool; that makes the variation in quality. According to my knowledge, a mohair noil made straight is pretty much the same thing all the time.

65 Q. And it is used for what?

A. There is no absolute, no definite purpose to which it can be put; put to a great many uses.

Q. Is it largely used?

A. Considerably; not very largely; no, sir; not an article very largely used.

Q. As largely as the Dobson samples?

A. No, sir; I think there is a great deal more of this used than mohair noils.

Q. More of Dobson's samples, though mohair noils are more valuable?

A. Mohair noils.

Q. Then I suppose the reason the Dobson samples are used more than the mohair noils is because they are cheaper?

A. They could not afford to put mohair noils in the same things.

Q. Common carpets?

A. Yes; besides that, mohair noils are a great deal better; it is hardly worth while.

Q. You do use mohair noils in fine carpets?

A. I never put mohair noils in carpets unless I get them very cheap.

Q. In what place, or as a substitute for what, do you use the Dobson samples?

66 A. To be used as a substitute for wool.

Q. For which wool?

A. Wools of Class 3.

Q. You use them as a substitute for wools of Class 3?

A. These Dobson samples; yes, sir.

Q. What is the difference in price?

A. It generally runs about four or five cents a pound difference; that is, duty paid.

Q. Which is the higher of the two?

A. The carpet wool that comes the nearest to it in regard to quality and cleanliness is about four or five cents a pound higher than the hair.

Q. So that the carpet manufacturers use the Dobson samples as a substitute in making carpets and use it in place of a clothing wool that is three or four cents a pound higher?

A. I did not say clothing wool; I said Class 3. You could not use that in place of clothing wool.

Q. Class 3, that is what you meant, is it not?

A. Yes, sir.

Q. Does it answer the same purpose?

Court adjourned until April 9, at 10 a. m.

67 DOBSON ET AL. *vs.* COOPER, COLLECTOR, ETC. } C. C. U. S. October term, 1890. No. 47.

THURSDAY, *April 9th*, 1891.

Present: Messrs. White and White, for plaintiff; John R. Read, esq., U. S. Attorney, and W. W. Carr, esq., Ass't U. S. Attorney, for the Government.

T. C. SEARCH, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your business?

A. Manufacturing.

Q. What is your firm?

A. Erben, Search & Co.

Q. Have you been accustomed to dealing in and making up stock such as the Dobson samples before you?

A. No, sir.

Q. Have you had any experience at all in that class of stock?

A. Not in working that class of stock.

Q. State whether you have had any experience, and whether you are a judge of it.

68 A. My experience is limited to the manufacture of mohair yarns. If you are talking about mohair, I do know a little something about it.

Q. How long have you been handling mohair?

A. I suppose I have been handling mohair for fifteen years, more or less.

Q. Largely?

A. In very considerable amounts.

Q. Look at the Dobson mohair samples. Mohair is hair of the Angora goat?

A. Yes, sir.

Q. State whether those Dobson samples are hair of the Angora goat.

A I have never seen any hair of the Angora goat that looked like those samples.

Q. I want your judgment.

A. My judgment is that this is not the hair of the Angora goat.

Q. Would that be accepted—is it merchantable as Angora hair?

A. It is not; it would not be with me.

Cross-examination by the DISTRICT ATTORNEY:

Q. The samples that you have before you have been taken from
69 the skins of the animals by what is known as the liming process, have they not?

A. This looks as though it had; yes, sir.

Q. How does that affect the hair or wool?

A. That deadens the hair or the wool. It seems to absord some of the life properties of the hair or wool, and makes it harsh.

Q. That is noticeable in that sample, is it not?

A. It seems to be to me, although I am not familiar with hairs as hair.

Q. As I understand you, you deal only in mohair?

A. We purchase mohair. We manufacture it, and one of the bi-products of that is mohair noil. Of course we sell that.

Q. For what purpose do you use it?

A. Mohair noil we don't use at all. We sell it. We do not manufacture it into anything.

Q. What is the difference between the Dobson samples and the short hair of the Angora goat? I mean, assuming that the short hair of the Angora goat has been subjected to the liming process, what would be the difference between that and the samples which you have before you?

70 A. I think the short hair of the Angora goat, if subjected to the liming process, would still be more flexible than this hair is, and more lustrous than this hair.

By the COURT:

Q. Is all the hair of the Angora goat combing hair?

A. No, sir. I think not.

Q. What do you mean by that?

A. By combing hair we mean hair that is fit to be combed. Some of the hair of the Angora goat put on the market that I have seen is not what we would call combing hair, because it is not long enough to comb.

Q. Not what the trade would call it?

A. Not what they would buy as combing hair, simply because not long enough.

Q. The noils of the Angora goat hair, are they subjected to combing?

A. No, sir, I have never known or heard of their being combed. They might be combed, but the product would be good for nothing. I think it would be less valuable than the noil itself.

Q. As that comes from the Angora goat or Angora goat skin, does it contain the long fibers of hair commonly found, or is it noil? In other words, if it is from the Angora goat, does it contain the long fibers
71 of hair, or simply the short hair or noils?

A. It contains no long fibers of hair.

By Mr. WHITE:

Q. You mean that in your hand?

A. Yes, sir.

Q. But I understand the court to have asked you about Angora hair when clipped from the goat.

The COURT. I asked whether or not, suppose that to be taken from the Angora goat skin, it contained all the ordinary hair?

A. No, I think not.

Q. What would it be, therefore, short hair?

A. Yes, sir.

Q. What would be called noil?

A. That is what it should be termed, for I know no way of separating the long from the short, except by combing and making the noil.

By Mr. WHITE:

Q. The Dobson sample, you say, is not Angora hair at all?

A. I think it is not.

Q. Please look at the sample now shown you, plaintiff's Sample A, and state whether that is clipped or pulled hair.
72 A. Some of it is certainly pulled.

Q. Do you mean that there is some of it that is not pulled?

A. No, I do not mean to say that at all. I say it is pulled hair.

Q. How do you detect that it is pulled?

A. By the scab remaining upon the lower part of the hair.

Q. And that is perfectly plain there?

A. Yes, sir; you can see the scab yourself.

Q. What hair is that?

A. That is hair of the Angora goat.

Q. In speaking about Angora hair and Angora noils, is that hair which is clipped from the fleece, or is it the biproduct that remains after the combing?

A. It is the biproduct remaining after the combing.

Q. No Angora produces noils in that state?

A. No, sir; not to my knowledge.

Q. It is simply short hair—the bi-product left after going through the process of combing?

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. Angora hair and mohair noils vary in quality, do they not?
73 A. Yes, sir.

Q. There is also a variation in price?

A. Yes, sir; the price increases according to the fineness of the hair and the length.

Q. Do you know what the difference in quality is caused by?

A. No; I can not say that I do. Very often, however, it is an imperfect breed of mohair.

Q. When you say mohair you mean Angora?

A. I mean Angora goat.

Q. They are convertible terms?

A. They are convertible terms.

Q. In what form is Angora hair or mohair noils usually imported? Is it clipped or pulled from the skin of the animal, or limed?

A. I think the bulk of the hair is mostly clipped from the animal; but I would not be so sure about that even—that is, about its being entirely clipped from the animal, because I know that it is possible to obtain wool without clipping it.

Q. Is there any other process than that of clipping and liming?

74 A. Yes, sir; you can get wool from sheep without that, or from the goat.

Q. How do you do it?

A. By simply not feeding the goats at the proper time, and letting them get weak, and when weak enough, pulling it off. The hair deteriorates—its growth is stopped, and it becomes weak. Some animals will shed their wool annually also without regard to their feed.

Q. What quality of Angora hair or mohair noils is the plaintiff's sample A?

A. That is a very fine quality of mohair.

Q. What is the character or quality of the Angora fleece produced by the plaintiffs?

A. That is a good quality of mohair.

Q. (Pointing to some fleece.) Is that the same thing?

A. Yes, sir; that is the same thing.

By Mr. WHITE:

Q. (Handing mat to witness.) Please look at that skin and state what it is.

(Objected to as not shedding any light upon the issue in this case, this being a foreign mat after subjection to treatment. It should not be compared with the samples in this case.)

75 By the COURT:

Q. Is the hair there in the natural state?

A. No, the hair is not in its natural state. It has been treated. It has been cleaned.

Q. Is that all?

A. That is all that I know of.

By Mr. WHITE:

Q. What is that skin?

(Objected to as above; objection overruled; exception by defendant.)

A. That is the skin of an Angora.

By Mr. WHITE:

Q. That is the way the skin comes as to the hair?

A. As to the hair, you will find the skin like this.

By the DISTRICT ATTORNEY:

Q. Is that a good quality or an indifferent quality?

A. It is a fair quality.

Q. (Handing to witness defendant's sample No. 2.) What do you call that—is not that Angora goat skin?

A. I should not be able to decide that. I don't think I have ever seen a skin that looked like that exactly, but it has many of the characteristics of it. I should not like to say that it was an Angora goat skin.

76 By the COURT:

Q. Why?

A. Because I have not sufficient confidence in my judgment on that particular skin to decide that it is Angora goat. I see many evidences about it that it might be a cross of the Angora goat, or something else.

By Mr. WHITE:

Q. It does not look like the usual Angora skin?

A. No, it does not, or I should be able to decide differently.

Q. But it has many characteristics of it?

A. Yes, sir.

JAMES DOBSON, having been recalled, was further examined, as follows:

By Mr. WHITE:

Q. What is sample A?

A. That is pulled Angora hair from the kid or young goat.

Q. Is that a high-priced quality or not?

77 A. No; it is a medium quality. It is not quite so long as the ordinary Angora.

Q. That makes it cheaper in price?

A. Yes, sir.

Q. It is from the kid, and not from the full grown-goat?

A. Yes, sir.

Q. How much of that particular lot have you?

A. We bought 50,000 pounds of it for 23 and ½ cents about three months ago.

Q. What is the usual price for the hair of the full-grown animal?

A. It would cost to-day about 40 cents.

Cross-examination by the DISTRICT ATTORNEY:

Q. That is the mature animal?

A. Yes, sir.

EMIL SCHEPPES, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. Look at the Dobson samples, and state what experience you have had in wool generally.

78 A. I have used a great deal of wool of all kinds. We have used a great deal of wool for thirty years of all kinds.

Q. And also hair?
A. Also hair.
Q. What is your firm?
A. Scheppes Brothers.
Q. Do you know what the Dobson sample is?
A. We have never used it. It is hair. I have seen it many times—that is, such hair as that of different grades.
Q. Are you familiar with the hair of the Angora goat?
A. Yes, sir.
Q. Is that it?
A. No, sir; I never saw anything like that.
Q. What is that known as in the trade commercially?
A. The peculiar name I do not know. I should take it for hair.
Q. Is that what it is known as—that is, hair?
A. I believe so.

By the DISTRICT ATTORNEY:

Q. What is your knowledge?
A. I have seen hair like that called hair in the trade.

79 By Mr. WHITE:

Q. You say it is not mohair?
A. It is not mohair.
Q. Is that combing hair of any kind?
A. No, sir; I do not believe that can be combed.
Q. Have you any doubt about it?
A. No; I have no doubt about it. It can not be combed.

Cross-examination by the DISTRICT ATTORNEY:

Q. Have you ever seen a commodity like that before?
A. Yes, sir.
Q. Do you deal in it?
A. No, sir.
Q. When did you see it?
A. Many times—two, three, and four years ago.
Q. What was it called then?
A. Hair.
Q. What kind of hair?
A. I don't know exactly what kind of hair they called it.
Q. Do you remember what it was called when it was presented to you?
A. Maybe it was called hair.

By the COURT:

Q. Was it called anything else?
80 A. No; it was not called anything else.

GEORGE W. PATTEN, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your business?
A. Wool merchant and manufacturer.
Q. To what extent do you handle this kind of stock?

A. I have handled a great deal of it in my time, of all kinds.

Q. Are you familiar with the stock which has been called the Dobson sample?

A. Yes, sir.

Q. Have you bought it, sold it, and manufactured it?

A. Yes, sir.

Q. Can you tell us what that is?

A. I think it is an admixture of goat hair and cow hair. I think the cow hair largely predominates.

Q. What is its name in the trade—what is it known as to the merchants who buy it, sell it, manufacture it, and use it?

81 A. Just according to the term that the merchant seeks to apply to it. He can call it cattle hair with perfect safety or goat hair. The general ordinary term is cattle hair.

Q. Sometimes it is called goat hair?

A. Sometimes, if a man wants to get half a cent a pound more.

Q. Is it ever called mohair or wool?

A. No, sir.

Q. Is that combing hair?

A. No, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. Is the Dobson sample that you have before you like the sample in the jar produced by the Government, which is unmarked?

A. I think they are about the same. The Dobson sample is rather the whitest of the two, I think.

Q. This has been handled?

A. Yes, sir. Well, I think anyhow the Dobson sample is probably the whitest.

Q. Did you ever say to anybody that that sample was Angora hair?

A. Not to my recollection.

Q. You would recollect if you had said so, wouldn't you?

82 A. I think so.

Q. So that you are perfectly clear that you never said to any one that this was Angora hair?

A. I don't think so.

Q. Have you any doubt about it?

A. No, I don't think I have.

Q. Do you remember having any conversation with any of the officers of the Government on that subject?

A. I can't remember on that particular subject. I am referred to every day about such matters.

Q. Do you remember whether you had any conversation with any Government officer at any time on the subject of this sample?

(Objected to. The witness is entitled to no time, place, and circumstance.)

Q. Do you know Mr. Taggart, the Government examiner?

A. Yes, sir.

Q. Do you remember whether you had any conversation with him on the subject of these samples?

A. I may have had and I may not, because Mr. Taggart refers to me almost daily, together with other gentlemen connected with this business,

upon this very subject. Mr. Taggart seeks to make a correct ruling,
83 perhaps I have been called to examine this very sample that you have in that jar, but I am not prepared to say as to any particular date or any particular hour. I may have said that, perhaps, that was Angora goat hair, but at any time I have said so I have said that it had been subjected to the liming process, which would defy almost any expert, and I am positive that I have said at the same time that the hair was mixed with cow hair. I can not remember the moment that Mr. Taggart asked me the question, or the day, but the general opinion and judgment that I have given upon samples of that character, when submitted, is in the line of the words I have spoken to you to-day.

Q. I am not questioning your honesty.

A. Not at all, but I simply do not want you to put me in the position which you assume.

Q. Do I understand you that it is quite probable that you told Mr. Taggart that the sample in this case was Angora goat hair?

A. Very likely.

Q. You would not have told him so at the time that you did unless you believed it, would you?

84 A. No. I have invariably told him that the question was open to serious doubt, because when the material is limed it destroys its character as what we would call Angora goat hair.

Q. If the question is open for serious doubt, and it is difficult to determine when it has been subjected to the liming process, why do you say that that is not Angora goat hair?

A. I have already said that I think that is the hair of the common goat mixed with cattle hair. Now I say that when you subject any of these hairs to the liming process, you immediately stamp upon them the character of the common goat, and a man takes his reputation in his hands when he undertakes to say that it is one thing or the other.

Q. Then it is by reason of the liming process that you stamp it as common goat hair?

A. Yes, sir.

Q. You do not say that that hair was not grown upon the back of an Angora goat?

A. No; nor do I say that it was. I do not say that it was, or was not.

Q. And, as I understand you, it would be difficult for any-
85 body to determine that question when it has been subjected to the liming process?

A. Yes, sir.

Q. What is the usual form of importing Angora hair or mohair noils?

A. The usual form of importing mohair noils is to import them as mohair noils.

Q. Is it usual to import it clipped from the skin of the animal, or limed?

A. Are you speaking of hair now?

Q. Yes, mohair noils, or Angora hair.

A. Noils you must separate altogether, because they are not the same thing. Mohair is imported in the fleece.

Q. And rarely imported limed?

A. And rarely imported limed as mohair.

Q. Do you know why?

A. There is no market here for it—for combing purposes it would only be imported as common hair.

Q. So that if the hair of the Angora goat was taken from the skin by the liming process and brought here, you would call it, and the trade would call it, common goat hair?

A. Without a question.

Redirect examination by Mr. WHITE:

86 Q. Liming destroys its commercial character as mohair or Angora hair?

The COURT. O: for com'ing purposes.

The WITNESS. Yes, for com'ing purposes. I have always been taught that there was enough of fatty substance in the fiber of wool to resist the alkali that is applied in taking it off the skin, and that the hair of the goat does not possess the same amount of fatty matter to resist that alkali, and the result is that this material when subjected to the liming process—its identity as material of that character would be almost entirely destroyed. It would certainly be unfit for any purpose, excepting the purpose it was used for—the purpose of adulterating carpet filling yarns. It could not be possibly combed under any circumstances.

By Mr. WHITE:

Q. When you speak of mohair being imported in the fleece, you mean in what?

A. In this condition. [Indicating.]

Q. But you were not referring to mohair noils?

A. No, sir; that is an entirely different product—an entirely different thing.

Q. Is the Dobson sample combing?

87 A. No.

Q. There is no question about that?

A. There is no doubt about it at all.

Q. You said that you had some doubt, or that you thought it would be difficult to tell whether that came off the back of an Angora or a common goat. Have you any doubt about its commercial designation and character?

A. Not the slightest.

Q. In any conversation with Mr. Taggart or with Mr. anybody else, did you ever say that that was the article of commerce known as such?

A. No, sir; Mr. Taggart knows very well that I did not, even if I ever said anything to him on the subject.

By the COURT:

Q. The common commercial designation of it is common goat or cattle hair?

A. Yes, sir; it is never known as anything else.

Q. So that whether this description of hair is taken from the Angora goat, or from any other description of goat, it is known as common goat hair?

A. Yes, sir.

Q. The term "common goat hair" then commercially does not
88 mean the hair of the common goat, but it means common goat hair?

A. Yes, sir.

Q. Without reference to the description of the goat?

A. Yes, sir. I will illustrate that to you in a word. Skins are brought here—mohair pelts—almost daily. The Government assesses duty upon the hair upon the skin. That duty is ten and twelve cents a pound, and the commercial value of that hair upon the skin is about 37 to 40 cents. The tanner here takes it and subjects it to the process of liming, by which he takes off the hair, and immediately that hair becomes worth 18 cents.

Q. A certain quality of hair is known as com'ing hair?

A. Yes, sir.

Q. Is the term "common goat hair" used in contradistinction to the term "combing"?

A. Yes, sir; precisely, to designate that it is not combing hair.

CHARLES J. WEBB, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your business?

89 A. Importer of hair and wools.

Q. You have had, I believe, a very extensive experience in that business?

A. I have for ten or fifteen years.

Q. Please look at the Dobson sample before you, and state what it is—that is, what its commercial name or designation is—what it is bought, sold, and used as.

A. We sell that as goat or cattle hair.

Q. What is its commercial designation?

A. Goat hair; common goat hair.

Q. That is what it is known as amongst merchants and the trade?

A. Yes, sir.

Q. Is it fit for combing purposes?

A. No, sir.

By the COURT:

Q. If it was, what would it be called?

A. I would call it mohair then.

By Mr. WHITE:

Q. What do you mean, exactly, by that? Under your left hand, is that what you call mohair?

A. Yes, sir; that is mohair.

Q. Do you mean that that Dobson hair under any circum-
90 stances is mohair?

A. No, sir; it is common goat hair.

Q. What you meant was that mohair was combing hair?

A. Yes, sir.

Q. And this is common goat hair?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. What is your business?
A. I am an importer and dealer in wool and hair.
Q. What is the sample "Defendant No. 1"?
A. That is common goat hair.
Q. Are you familiar with the hair of the mountain goat?
A. I don't know what you mean by mountain goat.
Q. You never heard of that?
A. No, sir; all goats are from the mountains, as I understand it.
Q. Is there not anything known as mountain goat?
A. Not that I know of; no, sir.
Q. You never heard of it?
A. No, sir.
Q. You never saw hair from the mountain goat?
A. No, sir; except this hair here, as I understand it.
91 Q. Do I understand you to say that you would call the hair of the Angora goat mohair?
A. The hair of the Angora goat is mohair.
Q. Does it vary in quality and condition?
A. It varies in quality; yes, sir.
Q. As much so as any other commodity of a like nature?
A. Not as much as wool. There are not as many grades in mohair as there are in wool.
Q. In what form is it usually imported into this country?
A. It is imported in the fleece.
Q. Is it imported in the form of noils?
A. It used to be.
Q. Is it imported in the form in which you find the plaintiff's samples as limed?
A. I do not call that mohair.
Q. I do not ask you that question. I ask you whether it is ever imported in the same form in which that is—that is, subject to the liming process.
A. I have never seen it imported limed.
Q. If it was subjected to the liming process, what would you call it then?
A. I would still call it mohair.
Q. You would do that because it was the hair of the Angora goat?
92 A. I would do it because it was the long mohair.
Q. But suppose it was the short noils, what would you call that?
A. Noils.
Q. You would not call it anything else?
A. No, sir; I would call it noils.
Q. Why?
A. Because that is what it is.
Q. Because it comes from the Angora goat?
A. Because it comes from this long mohair.
Q. It comes from the manipulation of the long hair of the Angora goat?
A. Yes, sir; by the combing process.
Q. And if the long hair of the Angora goat had been taken from the back of the animal by the liming process, you would still call it mohair?

A. I would call it mohair, undoubtedly.
Q. And you would call the noils noils?
A. If it came from the mohair, certainly.
Q. The Angora fleece is fit for combing purposes, isn't it?
A. Yes, sir.

Redirect examination by Mr. WHITE.

Q. It is not called noils because it is mohair?
93 A. Certainly not.
Q. There are noils of silk and wool?
A. Yes, sir; a noil is a bi-product from the long hair, and you can not get a noil unless you have long hair to start with.
Q. Then you did not mean that if there were noils they were necessarily mohair?
A. I said if they were noils they were noils, and if they came from mohair they must be mohair noils.
Q. Did you ever in your life see, or is it known amongst merchants, that there is any such thing as limed mohair noils?
A. No, sir.
Q. There is no such article known to the market?
A. No, sir.

By the DISTRICT ATTORNEY:

Q. Did you ever see any wool or hair from the Angora goat that was taken from the skin by the liming process?
A. Very little.
Q. When did you see that?
A. I can't remember.
Q. Did you see it manipulated or combed?
A. No, sir; I have never seen it combed.
Q. Could it be combed?
94 A. If it was long enough.
Q. The fact that it was limed would affect it how?
A. It makes it a little harsh, but after it was scoured you could not tell it in the noil.
Q. In a case of that kind, where the Angora hair had been taken from the back of the animal by the liming process and the hair manipulated in the factory, what would you call the noils?
A. I was just going to say that when you scour that the lime would disappear. I could not tell a noil made from that any different from other noils, and nobody else.

By the COURT:

Q. They are called nothing else; known to the trade as noils?
A. Yes, sir; as noils.
Q. But not as Angora-goat hair noils?
A. Mohair noils. A noil is combed from the wool or hair from whence it comes. If from mohair, it is mohair noils, and from alpaca, alpaca noils. The trade name is mohair, but the technical name is Angora goat hair, as I understand it. Mohair and Angora goat hair is the same thing.

95 SEVILLE SCHOFIELD, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. You are a woolen and cotton manufacturer?

A. Yes, sir.

Q. How long have you been in that business?

A. Over thirty years.

Q. About how many hands do you employ?

A. Between 1,500 and 3,000.

Q. Have you handled large quantities of the stock before you—both the Dobson sample and the mohair?

A. We have handled a little mohair, but not much.

Q. Look at the Dobson samples in the paper before you. Do you use that material or similar material very extensively?

A. Yes, sir.

Q. As largely as anybody in the trade?

A. No, sir; I can not say that. Still, I don't know how much of it we use. We use a great deal of it.

Q. What is that?

A. It is what we would term hair or goat hair. Cow hair—goat hair.

Q. Is it an article well known amongst the trade?

A. Yes, sir.

96 Q. What is the trade name of it—what do merchants and manufacturers call it when they are handling it, buying and selling it?

A. The general name of it is hair.

Q. What other name—goat hair or cattle hair?

A. No, sir; it is generally called cow's hair or goat hair. In nine cases out of ten it is always named cow hair.

Q. That is what it is known by in the trade?

A. Yes, sir.

Q. Is that fit for combing purposes?

A. No, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. The Angora mohair fleece that is before you, are you familiar with that?

A. Yes, sir.

Q. Have you used it?

A. We have used some of it; not a great deal.

Q. That is used and is fit for combing purposes?

A. Yes, sir; that is, the long of it. Of course there is some of this that will go into noil.

Q. The noil would not be combed?

A. The noil is from the combing.

97 Q. That is, after it had been combed, but you would not again comb the noils?

A. No, sir.

Q. That is known in the trade as combing hair or wool, is it not?

A. Yes, sir; it is known for combing purposes.

Q. There is no doubt about that?

A. No, sir; that is, the long of it.

Q. But I say that it is known as combing hair or wool in the trade, is it not?

A. Yes, sir.

Q. Please state why it is that the Dobson samples before you are not combing hair or wool?

A. You can pull the whole fleece out. I could not pull that other loose.

Q. What do you mean to say by that?

A. I mean to say that this would all go down to the floor, and would never get to the machine. There is not the length and not the strength of the fiber.

Q. Is it only the difference in the length, or is there any other reason which occurs to you?

A. It is in the strength also. It is kind of rotten.

Q. Why is it rotten?

98 A. It is a little tangled, and as soon as you get hold of it, it breaks apart.

Q. Is not that because it has been limed?

A. Yes, sir; that would do it, too. This class of hair generally has been limed.

Q. And if the fleece that is under your hand had been limed, then it would become like this sample of the Dobson's before you?

A. It would go that way very much. It would not be worth the purposes that it is worth here.

Q. That is, for combing purposes?

A. For combing purposes.

Q. What has been your experience, so far as your knowledge goes, as to the quality of importations of that kind which you have in your hand—the fleece?

A. That I don't know.

Q. You have never observed that, nor do you know in the trade the relative amount in quantities of the Dobson samples before you, or in the fleece?

A. No, sir; I know that there is a large quantity of this brought in, but there is a thousand times more of the Dobson sample than in the fleece brought in.

By Mr. WHITE:

99 Q. You say if the mohair was limed it would be made tender, like the hair?

A. Yes, sir.

Q. But you do not mean to say that it would be turned into hair, do you?

A. You could not use it only for the same purpose as they could use the hair.

Q. That is, if it was limed, then it would be used for the same purpose as if it was hair, or only for the same purpose that you can use hair?

A. Yes, sir.

Q. Would it then be commercially known as hair?

A. Yes, sir; it would be commercially known, because it would be adopted for that purpose.

Q. I don't know whether you mean that the Dobson sample was taken from the alpaca goat or whether it was taken from the common goat or cow. Can you tell?

A. This never was near any goat.

Q. Then you did not mean that that was mohair limed and reduced to that condition?

A. No, sir.

Q. That is a different thing altogether?

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. You think it came from the back of a cow, do you?

100 A. It is more from the back of a cow than it is from mohair.

By Mr. WHITE:

Q. Is there any difficulty in telling the difference between the hair that comes from the different animals that are known as cattle—that is, the cow and the goat and animals of that character—can you distinguish between those different varieties of hair; what is known as hair in the trade?

A. Not much.

Q. They are all sold together?

A. They are all thrown in together and they are generally all termed cow hair.

Q. I suppose very commonly in the trade, when it is offered for sale, it is mixed from these animals?

A. Yes, sir.

CHARLES J. COLE, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. You are a dealer in hair?

101 A. Yes, sir.

Q. What is your firm?

A. William F. Annand & Co.

Q. Have you had much experience in that article?

A. Seven or eight years.

Q. Please look at the Dobson sample in front of you, and state what is the commercial name of that article.

A. This would be called the common goat or cattle hair.

Q. Are those convertible terms in the trade?

A. If a party brought that in and called it cattle hair, we would say that it was cattle hair. If they brought it in and said it was goat, we would call it goat; they are so near alike.

Q. You mean they are called that interchangeably—one man calls them cattle hair, and the other goat hair?

A. Yes, sir; they are so near alike that it would be almost impossible to tell which was which.

Q. Are they kept distinct, generally, or mixed together—those varieties of hair—cow hair and goat hair?

A. Sometimes they are separate and sometimes they are mixed.

Q. Is that fit for combing purposes?

102 A. I am not familiar with hair fit for combing purposes. I don't have anything to do with it.

Cross-examination by the DISTRICT ATTORNEY:

Q. Do you happen to know just what is the relative amount of that article of fleece, the Angora?

A. I don't know anything at all about this.

Q. I understand that you are a dealer in wool?

A. Yes, sir.

Q. You know that article under your hand—the fleece?

A. We never handle anything of that kind. We have handled low-grade Angoras.

Q. Do you know the quantity that is introduced in the fleece in the trade?

A. I have no idea.

Q. As to the low grade Angoras, there are different grades of Angora hair or wool?

A. Yes, sir.

Q. Just as there are different grades of wool?

A. Yes, sir.

Q. In what shape is the low grade of Angora introduced, as far as you know, in the trade, brought to this country—is it in the fleece, or clippings, or on the skin, or how?

103 A. In the washed state. I might say something like that [indicating]—the same as cattle hair is brought here.

Q. How is it different from the Dobson sample before you?

A. It is finer in texture, a finer grade.

Q. Is it brought in on the skin after having been washed?

A. I don't know. We have never brought it in that way. Any that we have brought in has been in this condition, the same as the Dobson sample.

Q. That has been limed?

A. I think so; yes, sir.

Q. Brought in in that way, that is a low grade of Angora or mohair?

A. Yes, sir; cattle hair.

Q. And the name, you say, is either cattle hair——

A. Yes, or low grade hair. It can be called either.

Q. You are familiar with the hair of the mountain goat, are you not?

A. No, sir. I could tell if I saw the hair.

By Mr. WHITE:

Q. Is there any article known to the trade as mountain-goat hair?

104 A. Not that I know of.

By the DISTRICT ATTORNEY:

Q. You do not know, then, the article known as mountain-goat hair?

A. No, sir.

Q. Look at the sample "Defendant No. I," and state if you know that?

A. Yes, sir.

Q. What is the trade name for it, if you know?

A. Common gray goat.

Q. Have you seen a similar quality of defendant's sample No. I, in white?

A. I think I have.

Q. What name is given to that?

A. Common white goat.

Redirect examination by Mr. WHITE:

Q. In the condition limed, and the fibers the same as the Dobson sample, is there any hair that is not sold, imported as common goat hair or cattle hair; does it all come under that designation?

A. I don't quite understand you.

Q. Does the hair that is imported in the condition of that Dob-
105 son sample, limed like that and of that length of fiber—does cattle hair cover the whole of it; is it generally known as cattle and common goat hair?

A. I think so; yes, sir.

Q. No matter where it comes from that is the commercial name of it, common goat hair or cattle hair?

A. Yes, sir.

The DISTRICT ATTORNEY: He did not say common goat hair. He said cattle hair.

The COURT: He said both. He said yes to counsel's question.

Mr. WHITE: We will put that beyond question. (To the witness.) Is the same article designated by both names, cattle hair and goat hair?

A. Yes, sir; of this order.

By the COURT:

Q. In that condition?

A. Yes, sir.

Q. And without reference to the description of the animal, whether Angora goat, or any other goat?

A. Yes, sir.

By Mr. WHITE:

Q. It is all known as cattle hair or goat hair when it is in that condition?

106 A. Yes, sir; cattle or goat hair.

By the DISTRICT ATTORNEY:

Q. I would like to understand you distinctly. Do I understand you to say that the hair of the Angora goat, when it is imported in that condition, is called by you common goat hair?

A. I should call this common goat hair.

Q. That is not what I asked. I asked you this—if the hair of the Angora goat is imported in that condition, what would you call it?

A. If you will show me the sample of what you mean, I can tell you.

Q. I have not got the sample. You are a dealer, and ought to be able to answer that question.

A. We have hairs coming in that we call Angora goat, and others common goat, that we call common goat or cattle hair—that which you have in your hand.

Q. But if the hair of the Angora goat has been limed, what would you call it?

A. Please put that question again.

Q. If the hair of the Angora goat is produced by the liming process, and imported into this country in that condition, what would it be called?

107 A. It would be called Angora goat in some instances.

Q. And in others what?

A. Common goat.

By the COURT:

Q. What do you mean in some instances?

A. When it is finer in texture, and longer.

Q. But just as that is?

A. Common goat and cattle hair.

Q. If imported in that condition, taken from the Angora goat, it is called common goat or cattle hair?

A. Yes, sir; if it is like that. If it is finer and longer in texture we then call it Angora.

By the DISTRICT ATTORNEY:

Q. What do you call the same quality of wool taken from the skin by the usual process of clipping?

A. I don't know anything about that. We never handle anything of that kind.

Q. How long have you been dealing in that article?

A. I suppose we have been handling this some four or five years.

Q. Not before the tariff act of 1883?

A. No, sir.

Q. Do you sell large quantities of it?

108 A. Fairly large. We handle more domestic hairs than foreign hairs.

Q. To whom did you sell that article of hair?

A. Carpet-yarn spinners and blanket manufacturers.

Q. It is used as a substitute for wool, isn't it?

A. I presume that that is what they use it for.

By Mr. WHITE:

Q. That is what is known as an adulterant?

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. What is the difference between an adulterant and a substitute?

A. I presume a substitute would be used altogether in place of wool, but when you adulterate you put wool with this.

Q. Is not that used as a substitute for the same quantity of wool?

A. Not altogether. They mix this with wool.

Q. For what purpose?

A. To make into yarn.

Q. What is the purpose of using it?

A. To give it color in very many instances, and to cheapen the article.

109 JOHN HENEY WILLEY, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your business?

A. In the United States I am an importer of all kinds of wool and hair, and different kinds of yarn.

Q. You have had a large experience here, and I believe abroad, in that business?

A. I have.

Q. Look at the Dobson sample in front of you, and state the commercial name of that article.

A. Are all these samples the same?

Q. They are from the same lot.

A. It is known to the trade as hair from the common goat. In France they call this chevrette.

Q. Chevrette is the French name for kid?

A. Yes, sir; and for the common goat as well.

Q. Is that what is known as combing hair?

A. Not at all.

Q. It can not be used for the same purpose?

A. No, sir; it can not.

Cross-examination by the DISTRICT ATTORNEY:

Q. How long have you been doing business in this country?

110 A. Since 1872.

Q. Where is your place of business in England?

A. In Bradford.

Q. What kind of business do you carry on there?

A. All kinds.

Q. What do you mean by "all kinds?"

A. We deal in all kinds of wool, hair, and other commodities.

Q. What is the name of the firm in Bradford?

A. John Henry Willey.

Q. That is your own name, isn't it?

A. Yes, sir.

Q. And it is John Henry Willey in this country?

A. Yes, sir.

Q. So that John Henry Willey, of Bradford, transports to John Henry Willey, of Philadelphia?

A. He does.

Q. How long has John Henry Willey, of Bradford, been importing to John Henry Willey, of Philadelphia?

A. Several years.

Q. How long?

A. Six or seven years.

Q. Since the tariff act of 1883?

A. Yes, sir.

111 Q. Not before?

A. Not before.

Q. Then it has only been known as common goat hair to the trade, since 1883?

A. In England and in France.

Q. I speak of here.

A. I don't know what it has been known here as before 1883. I don't know what it has been called here.

Q. But you know of it?

A. I know of it in England.

Q. From your knowledge of the trade, how long has that been known as common goat hair in America?

A. To my knowledge, it has been known as common goat hair since 1884.

Q. Prior to that time what was it known as?

A. I don't know. I was not connected with it then.

Q. You have been in business here since 1872?

A. I have sold wool to the States since 1872. I have been in business here since 1883.

Q. Do you import much of that article known as the Dobson sample?

A. Not exactly like this, but something similar from the same kind of animals.

Q. Do you import Angora in the fleece or in the clippings to the United States?

112 A. No, sir, I do not. But we deal in it largely in England.

Q. You are familiar with the English business of wool?

A. Yes, sir.

Q. You go there every year, don't you?

A. No, but I have only returned about a month ago.

Redirect examination by Mr. WHITE:

Q. Have you ever known that article, the Dobson sample, to be known in America under any other name than goat or cattle hair?

A. Not at all.

Q. Then since you have known it at all in America it has been bought, sold, and imported under that designation?

A. Yes, sir. It has either been bought, sold, or imported under the designation of chevrette—common goat hair or cattle hair.

Q. I understand you that you came here in 1884, and before that you knew it in England?

A. I knew that in England twenty years ago.

Q. What was its name during all that time?

A. Some English people called it chevrette, like the French people called it. That is the French for goat. Some called it cattle hair.

113 Q. Then it was either known by the French name for goat or goat hair or cattle hair all that twenty years?

A. Yes, sir.

WILLIAM T. TILDEN, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your business?

A. Dealer in hair particularly, and somewhat in wool.

Q. Please look at the Dobson sample in front of you and state the commercial name of that article.

A. It is hair, unquestionably.

Q. My question was, what is it known amongst the trade as when you are buying and selling it?

A. Hair.

Q. Is that fit for combing purposes?

A. Not at all.

Cross-examination waived.

By Mr. WHITE (continuing):

Q. Have you been in the habit of importing that?

A. Yes, sir.

Q. You have imported it how recently?

114 A. Within a year. I can't tell you more definitely than that. We would import it now if it was not for the new tariff law.

Q. That is the tariff of 1890?

A. Yes, sir; the last tariff.

Q. Under what name was it imported?

A. Under the general term of cattle hair. There is a question in my mind whether that is goat hair or not.

JOSEPH S. LORD, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your business?

A. Wool and hair.

Q. Are you an importer of it?

A. Yes, sir.

Q. Please look at the Dobson sample and state its commercial name.

A. It is known as goat hair or cattle hair either. Either name would cover it.

Q. When you imported it, under what name was it imported?

(Objected to.)

115 Cross-examination by the DISTRICT ATTORNEY:

Q. For what length of time have you been in the business?

A. Six or seven years, off and on.

Q. What have you to say as to the fleece that is under your hand?

A. That I don't know much about.

Q. You don't know anything about that at all?

A. No, sir.

CARL RUBENO, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your business?

A. I am a dealer and importer in wool and hair.

Q. Please look at the Dobson sample and state whether you recognize it as an article known to the trade, and under what designation.

A. It is known as goat hair or cattle hair. We generally call it simply hair.

Q. Is that the same article that is known as mohair?

116 A. No, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. Do I understand you that it is generally called simply hair?
A. Yes, sir.
Q. That is its trade term, isn't it?
A. Yes, sir.

T. F. ALVEY, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. Are you familiar with the class of goods before you?
A. I am somewhat familiar with them.
Q. Do you deal in them?
A. Yes, sir.
Q. Please state what that article is known, bought, and sold as in the trade.
A. White hair; sometimes called cattle or goat hair, according to a person's likes or dislikes.

Cross-examination by the DISTRICT ATTORNEY:

Q. How long have you been in the business?
117 A. I have been handling this stock ten years.
Q. Have you been importing it?
A. Yes, sir.
Q. How long have you been importing it?
A. About six years.
Q. You did not import any of it prior to the passage of the tariff act of 1883?
A. No, sir.
Q. Was it dealt in prior to that time?
A. Yes, sir.
Q. To any extent?
A. Yes, sir; to a large extent.
Q. Do you mean here?
A. Yes, sir.
Q. What was it called then?
A. White hair.
Q. For what purpose is it used?
A. For carpet yarn.

118 RUDOLPH C. BINDER, having been duly sworn, was examined as follows:

By Mr. White:

Q. You are a manufacturer?
A. Yes, sir.
Q. Do you use this class of goods?
A. We use mohair.
Q. Look at the Dobson sample and state whether that is mohair.
A. No, sir.
Q. State what it is and what it is known as in the trade.
A. I should say that it was cattle hair.
Q. Have you any doubt about it?

A. No, sir. I have seen this worked, and I have had curiosity to know how they could keep it up on the cards without dropping down.

Q. Can that be worked with the same machinery as mohair?

A. No, sir.

Q. What do you say the commercial name of it is?

A. Cattle hair.

Q. Is that combing hair?

A. No, sir.

119 Cross-examination by the DISTRICT ATTORNEY:

Q. Do you use the Dobson samples in your mill?

A. No, sir.

Q. You do not deal in that at all?

A. No, sir.

Q. You neither buy or sell it?

A. No, sir.

Q. So that you have never come in contact with it?

A. Only with mohair. We use mohair.

Q. Do you use the article like the Dobson samples?

A. No, sir.

Q. Have you ever bought or sold anything like it?

A. No, sir.

Q. You have never dealt in it?

A. No, sir.

Q. There are various grades of mohair, are there not?

A. There are.

Q. They are high and low?

A. Yes, sir.

Q. And no matter how low it may be called, it is still called mohair if it is mohair?

A. Yes, sir; certainly.

Redirect examination by Mr. WHITE:

Q. But that is not mohair?

A. No, sir; that is not mohair.

120 JOSEPH C. MIDGELY, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. What is your business?

A. The wool business.

Q. What is your firm?

A. I sell goods for an English firm.

Q. Please look at the Dobson sample and state whether that is an article that you are familiar with.

A. I know this article.

Q. What is it?

A. It is hair from the common goat.

Q. Is it largely dealt in and imported, or not?

A. Yes, sir.

Q. That is the trade name and designation?

A. Yes, sir.
Q. Can that be used for trade purposes?
A. No, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. Do you mean to say when you speak of it to the trade that you use all those words, and say "Hair from the common goat?"
A. No, sir; I simply call it hair.
Q. That is what the trade would call it?
121 A. Yes, sir. The full designation is "Hair from the common goat."
Q. Did you not say a moment ago that if you were speaking of that article you would speak of it only as hair?
A. Yes, sir; exactly, for shortness.
Q. Then isn't that the trade designation?
A. Hair—white hair, colored hair—different colored hair.
Q. Colored hair or white hair?
A. Yes, sir; or red hair.
Q. Do you import it into this country?
A. No, sir.

By the COURT:

Q. What is hair from the alpaca goat called?
A. I don't know of such a goat. Hair from the Angora goat is called mohair.
Q. That is known to the trade as mohair?
A. Yes, sir.
(Counsel for plaintiff rests, after offering in evidence the samples and papers heretofore identified and used in the trial.)

Defendant's testimony.

Mr. TAGGART, heretofore sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You were the examiner in this case?
122 A. Yes, sir.
Q. How long have you been in the employ of the Government as an examiner?
A. Five or six years.
Q. You are familiar with the article in suit here?
A. Yes, sir.
Q. I show you a sample, which is a sample of the article in suit, of this importation. Have you examined it?
A. Yes, sir.
Q. What is it?
A. In my judgment it is a low grade of Angora goat hair.
Q. You are familiar with the trade terms of that article, are you?
A. I am familiar with the terms used in invoices.
Q. There are different grades of Angora goat hair, I presume?
A. There are, yes, sir.
Q. You are familiar with importations of Angora hair, or mohair?

A. Yes, sir.

Q. State whether or not that is in the usual and ordinary condition in which Angora hair is imported.

A. It is not. Angora goat hair usually comes in the fleece. Un-
123 der the whole law it came in the shape of noils.

Q. In the fleece, is that in clippings or not?

A. No, sir; in the fleece it is like that [indicating]. That is the whole fleece.

Q. The clippings are like the plaintiff's sample A; that is called clippings, is it?

A. That is shorter Angora.

Q. The sample in suit—in what shape or form or condition is it imported?

A. It is imported in the condition that we see it here; and I understand that it is taken from the skins of dead animals by putting the skins in lime and pulling the hair from the skins—not clipping it, but pulling it from the skins of the dead animals.

By the COURT:

Q. Does that method of getting the hair from the skin necessarily depreciate its value?

A. The lime does; yes, sir.

Q. Could it be clipped from the skin by liming?

A. It could be, but it would be shorter.

Q. As short as after liming?

A. Yes, sir; it would be shorter if it was clipped than it is after liming.

124 Q. When the fleece or the hair is taken from the dead animal by the liming process it is gotten in as valuable a condition as by any other method of taking it, is it?

A. No; not quite. It is deadened, and you tender by liming.

Q. Is it more economical, or why is it done?

A. I never saw any Angora imported of this length, or of mohair imported of this length, except in liming.

Q. How do you know that it was gotten by liming?

A. By the lime in the hair.

Q. How do you know that it was gotten from the Angora animal?

A. I determine whether it is Angora by examination of the hair.

Q. That is the only way you determine?

A. Yes, sir.

Q. But you do say, if I understand you, that the liming of the hair of the Angora goat, instead of taking it off with the shears, depreciates its value?

A. Yes, sir.

Q. Why is that process resorted to in the Angora skins?

A. I think it is too short to shear, and that that is the reason it is taken off that way.

Q. But you only judge that it is Angora in these instances because of the character of the fiber?

A. Yes, sir.

125 Cross-examination by Mr. WHITE:

Q. How long did you say you had been in the service of the Government?

A. About six years.

Q. Have you been an examiner during all that time?

A. Yes, sir.

Q. You have said that you supposed the reason that that was taken off by liming was that it was too short to take off otherwise?

A. Yes, sir.

Q. Would the hair of the Angora goat be too short to clip? Did you ever know of an Angora goat fleece in its natural condition being too short to be clipped?

A. Yes, sir; I have examined a great many Angora goat skins and found them too short to clip. The clips are taken from the live animals. This is taken from a live animal; the other is taken from a dead animal.

Q. The skins that you referred to—what condition were they in—that you say were Angora goat skins that could not be clipped?

A. Some of them were quite short—from an inch and a half to three or four inches long?

126 Q. Can you produce any skin of an Angora goat with hair of that length?

A. I don't know whether I have any here. I have at the office.

Q. To what extent have you been familiar with just such material as that in the sample that has been shown you?

A. We have had a great deal of hair—goat hair—common goat hair and Angora goat hair, in the last four or five years.

Q. Do you mean just that class of goods?

A. Some similar to this, and some commoner.

Q. Under what name did you class those goods, or did you know them, in speaking with people engaged in the trade?

A. We classed them as goat hair.

By the COURT:

Q. Under what designation is the hair of the Angora goat classified?

A. In classifying we do not often name the hair. We do not say Angora hair; we simply say goat hair, so much a pound. I think, in this instance, though I have not the invoice before me, that I wrote on this invoice, "Angora goat hair."

127 Q. Is it or is it not customary to designate where it is the hair of the Angora goat?

A. No, sir; it is not. For instance, we would not call this [indicating] on an invoice Angora goat hair.

By Mr. WHITE:

Q. What would that [indicating] be invoiced as?

A. It would be invoiced as "Angora goat hair."

Q. Did you ever see the other invoiced as Angora goat hair?

(Objected to.)

A. No, sir.

Mr. WHITE. The witness has stated that Angora goat hair was invoiced as Angora goat hair always. He has introduced that question. Now I ask him what was this other material invoiced at.

The COURT. His answer was that he designated it Angora goat hair in this particular case. How did the importer designate it? We had that evidence yesterday from somebody. The witness may state it again.

The WITNESS. It was invoiced as goat hair.

The DISTRICT ATTORNEY. It was invoiced as white cattle hair, with the word "goat" in brackets.

Mr. WHITE (to the witness). Do you say that you marked "Angora goat hair" on this invoice?

A. I think I did.

128 Q. Do you know whether you did?

A. The invoice is here and will show.

[Invoice handed to Mr. White by the district attorney.]

By Mr. WHITE:

Q. How many invoices of similar hair have you passed during the last six years that you have been employed in the custom-house?

A. I can't say. A great many, I presume.

Q. Did you ever mark any Angora before this particular invoice?

A. Yes, sir; I have done so.

Q. Can you tell us any instance in which you did it?

A. No, sir; I can't recall now. It wasn't a very unusual thing, where there was a question of what kind of hair it was, to write it on the invoice.

Q. That is, where there was a question?

A. Yes, sir.

Q. Has there been any question of such material as that since 1886 in the McNealy case?

A. I think so. In that case the hair was upon the skin.

Q. What has that been treated as by the Government itself since—as combing wool or as goat hair—free, or under the duty that you have claimed on this?

129 A. Such an article as this, if it was clearly from Angora goat hair, would be returned——

Mr. WHITE. (Interrupting.) I do not ask you about that.

The COURT. How, if it was just like that?

The WITNESS. It would be returned as Angora goat hair, ten cents per pound.

By Mr. WHITE:

Q. What have you passed material as a class, say exactly like the Dobson sample, during the last four or five years?

A. I can only tell by seeing the invoice; but my judgment is that all such articles exactly like this have been classed as goat hair.

Q. And free?

A. No, sir; not free. There has been no goat hair passed since the decision of the court—no Angora goat hair passed, as far as I know, at the appraiser's stores free since the decision in the McNealy case. Common goat hair was passed free.

Q. I do not ask you about Angora goat hair, but such material as that which is before you.

A. We say that is Angora goat hair of a low grade.

Q. That is not what I asked you.

A. That is the classification we put upon this article.

130 Q. Have you at any time before this particular case classed that as anything but goat hair?

A. I don't know whether I have written "Angora" upon any other invoice, or have returned it as goat hair, ten cents a pound—goat hair class 2.

Q. Can you tell us any instance in which you classed material just like that at ten cents a pound before this in the last five or six years?

A. The invoice books will show. I can not remember.

Q. Do you mean to say that you do not know that that has been passed right straight along as free?

A. I don't know that it has been passed free. When it came under my supervision it was not.

Q. We have heard that this is the seventh lot of this same material—that six invoices have been passed, and that this is the seventh and last one. Are you the very officer who passed the other six?

A. I couldn't answer that without I saw the articles. There is a great difference in hair. I would want to see the samples.

Q. You are familiar with the marks and numbers (handing document to witness). Look at that paper and refresh your recollection, and state whether the prior six lots of this very same material were not

131 passed by you as free.

A. I have no recollection of it, and I couldn't tell anything about that without having the samples before me. There is a great difference.

Q. Then you are not able to say whether you passed six lots or six invoices of this very lot of goods free or not?

A. No, sir; I can't say.

JAMES G. KITCHEN, having been duly sworn, was examined as follows:

BY the DISTRICT ATTORNEY:

Q. You live in Philadelphia?

A. Yes, sir.

Q. What is your occupation?

A. Dealer in wool, hair, etc., to a considerable extent. I have been so for a number of years.

Q. How long?

A. I have been in business a matter of eighteen or twenty years.

Q. Look at the sample before you, in the glass jar, produced by the defendant, and state whether or not you are familiar with it as an article of trade. Do you know that article?

132 A. I do; yes, sir.

Q. What is its trade name?

A. White hair.

Q. What kind of hair is it?

A. It would be called either goat or cattle hair, just according to the whims of the party selling it.

Q. Are you familiar with Angora hair?

A. We don't handle mohair in the fleece.

Q. Neither in the fleece nor from clippings?

A. We don't handle mohair of any kind; that is, the long hair. The long hair I don't handle as mohair.

Q. What do you handle as mohair—in what form or condition?

A. I don't call anything of the short hair mohair.

Q. Did you not say in the office of the United States attorney yesterday, in the presence of Mr. Hanlon, that the article in front of you in that jar was known to the trade as Angora goat hair?

A. I didn't say that it was known to the trade as Angora goat hair; that it was goat hair. It is either called goat hair, cattle hair, or white hair.

Q. Did you not say yesterday, in my presence, in my office, and in the presence of Mr. Hanlon and other gentlemen, that that article in
133 that jar was Angora goat hair?

A. I have said that it was Angora goat hair; but I did not say that it was called so by the trade.

Q. You said it was Angora goat hair, but you did not say that it was called so by the trade?

A. Yes, sir. That is not its trade designation.

Q. How long have you known it?

A. I have dealt in it for a matter of ten years.

Q. How long have you known the article like that in the jar?

A. This special article as white hair I have dealt in eight or ten years.

Q. Have you imported it?

A. Yes, sir.

Q. You know it as white hair?

A. Yes, sir.

Dr. THOMAS TAYLOR, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. In Washington, D. C.

Q. Do you hold any position in the public service?

A. Yes, sir; I am chief of the division of microscopy, of the Department of Agriculture.

134 Q. How long have you held that position?

A. Twenty years.

Q. What are your duties?

A. My duties are largely in the investigation of fibers, vegetable and animal, and other matters—the butters or oleomargarine of commerce.

Q. In the discharge of your duties have the various kinds of wool and the various kinds of hair or textile fabrics been submitted to you for examination?

A. Yes, sir; largely.

Q. Both by the Government and by manufacturers and importers?

A. Yes, sir.

Q. Have you examined the Government sample in this suit, the article imported by the plaintiffs?

A. Yes, sir.

Q. Have you examined it under the microscope?

A. Yes, sir.

Q. Have you examined the hair of the mountain goat?

A. Yes, sir.

Q. Have you examined what it known as common goat hair?

A. Yes, sir.

Q. Have you examined Angora goat hair?

A. Yes, sir.

135 Q. And also Angora mohair noils?

A. Yes, sir.

Q. State the difference between those respective fibers.

(Objected to as irrelevant; this is not a question of scientific examination of species, but a question of what is the commercial name of the article, and what was in the purview of the statute and in the minds of the legislators when the act was passed. Objection overruled.)

Q. What is the difference between the physical structure of the mohair noil, or the hair of the Angora goat, and that of the common goat?

A. The hair of the Angora goat, whether it is this or that on the fleece, is a very fine hair. Low powers of the microscope really will show it very nicely, because of the indications being so clear. It is translucent. It has no black spots nor black tubes running through it, as is found in the common hair, such as those three skins that were exhibited. They have running through them a core, with pigment matter. This has no core and no pigment matter.

Q. Is the custom-house sample of the subject of this suit like the Angora hair?

136 A. Yes, sir.

Q. Is it different from the common goat hair?

A. It is different entirely under the microscope as relates to its structure. Common goat hair, as I have stated, contains a very large core. It is nearly all core—black, or brown, or yellow pigment matter. This has no pigment matter at all.

Q. Nor has Angora goat hair?

A. No, sir. There may be accidentally a hair, one in a thousand or so, but that is not the character of the hair.

Q. From the knowledge that you have derived from your examination of these various fibres, are you able to express an opinion as to what this importation is?

A. My opinion, without any doubt, is that this under consideration is a low grade mohair or Angora, which is the same thing.

Cross-examination by Mr. WHITE:

Q. Have you ever been in the business of buying or selling or manufacturing this material?

A. No, sir.

By the DISTRICT ATTORNEY:

Q. You have your microscopes here, have you not?

137 A. Yes, sir; I have six here already to exhibit to the jury, if they desire, in the next room.

WILLIAM LAWRENCE, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. In Bellefonte, Ohio.

Q. Were you formerly connected with the public service?

A. Yes, sir.

Q. What position did you hold?

A. I was First Comptroller of the Treasury Department for five years.

Q. What other positions have you held?

A. I was in Congress ten years.

Q. Did you hold any other public position?

A. I have been common pleas judge in Ohio.

Q. Are you engaged in the ownership of sheep and the raising of sheep?

A. Yes, sir; part of my business consists in having farms managed; among other purposes, to raise wool and sheep.

Q. How many sheep have you now?

A. Most of my sheep are owned by myself and tenants in common. We have about 1,200. Besides that I have other land rented
138 out on which there are probably a thousand more sheep.

Q. Are you connected with any association interested in wool-growing?

A. I am president of the Ohio Wool Growers' Association.

Q. Are you familiar with the various kinds of wool and hair that are dealt in in commerce?

A. I have owned sheep most all the time for more than thirty years, and I am somewhat familiar with wool, more particularly the merino, but I have raised some of the Shropshires and some Cotswolds. I have not dealt in hair, and what knowledge I have consists simply of the examinations which I have made of Angora goat hair and some others.

Q. From the knowledge that you have, and from your experience, are you able to state what the custom-house sample in this suit contained in that jar is?

(Witness objected to as not having qualified as an expert.)

Q. To what extent have you examined hair?

A. I have examined alpaca goat hair on quite a good many occasions, covering several years, somewhat extensively.

139 By the COURT:

Q. Under what circumstances?

A. Simply for the purpose of ascertaining how it was like, and how it compared with wool.

Q. How long ago?

A. Probably six or eight years ago.

Q. Did you compare it with other goat hair or only with wool?

A. I have compared it with the common goat hair.

Q. Not with cattle hair?

A. I think not with cattle hair.

Q. Did you compare it with the hair of the common goat?

A. Yes, sir; the black and gray goat, such as run about the commons.

Q. Did you do that repeatedly?

A. Yes, sir.

Q. Do you think you are able to distinguish between the hair of the Angora goat and the hair of our common goat?

A. I do not think I would be able to distinguish simply by sight and touch without a microscopic examination. I have made a microscopic examination of the Government sample of Angora goat hair and
140 of the Angora goat hair which is now in question, and from that microscopic examination I have no doubt but that I can distinguish.

(Witness admitted.)

By the DISTRICT ATTORNEY:

Q. From your knowledge and experience upon this subject, what, in your judgment, is the article in the jar before you—the custom-house sample of the subject-matter of this suit?

A. From my knowledge and observation and the microscopic examination which I made, I entertain no doubt but that the specimen now in controversy is a low grade of Angora goat hair.

Cross-examination by Mr. WHITE:

Q. What do you call a low grade—that is, as I understand, a cross of Angora goat?

A. No; not necessarily so. A cross, of course, of an inferior animal would produce a low grade; but sheep—and, as I understand, goats also—will deteriorate if they are not properly cared for. I know that sheep will. The character of the hair will greatly change and deteriorate. When I speak of low grade I mean that which is not up to the
141 general good quality, or average of general good quality.

Q. Did you ever see any fleece of the Angora or mohair that was of the same length and fibre as that before you?

A. The fleeces that I have seen are longer than this. This, as I understand and suppose, from having examined it, has been pulled after the liming process.

By the COURT:

Q. That was not quite the question. The question was whether you had ever seen Angora goat hair that was just like that.

A. I have never seen Angora hair just like this and in this condition, because I have never seen other Angora goat hair subjected to a liming process.

By Mr. WHITE:

Q. Do you understand that the liming process shortens the fibre?

A. The liming process extracts from the hair——

Q. Please answer the question. Do you understand that the liming process shortens the fibre?

A. Not that alone.

Q. Do you understand that either pulling or the liming process shortens the fibre?

142 A. Pulling after the liming will render the fibre liable to break shorter.

Q. Did you understand that that was what I asked you?

A. I do not understand that the liming process alone would shorten the length of the fibre.

Q. Do you understand that pulling reduces the fibre to the condition in which that is?

A. I saw a specimen of this before——

Q. Be good enough to answer the question. Do you understand that either pulling or liming shortens the fibre to the condition in which you see it there?

A. That would depend upon the amount of pulling to which it was subjected.

Q. But you understand what the pulling is?

A. The mere pulling of the original fleece and the liming, I do not understand would shorten it to this dimension.

Q. Then I understand that it is your judgment as an expert that neither the liming or the pulling accounts for the shortness of that fibre which is in your hands?

A. I think that alone would not.

Q. You have stated a good many positions that you have
143 occupied. Are you also counsel or have you been counsel for the Woolgrowers' Association?

A. No, sir; I was appointed by the National Woolgrowers' Convention—not as counsel.

Q. Are you a member of the bar?

A. Yes, sir.

Q. You have been active for them in that capacity?

A. Never. I was appointed by the National Woolgrowers' Convention in two successive years; one to go before the Finance Committee of the Senate and another to go before the Finance Committee of the House.

By the COURT:

Q. The question was, as I supposed, whether or not you had any appointment that had connection with this case—that is, anything with relation to the question involved in this case.

A. I have not, and I never acted in the capacity of counsel for the woolgrowers in the sense that I was employed as a lawyer or received any compensation for my services.

By Mr. WHITE:

Q. Then you were a lawyer without compensation in this case?

A. I represented the interests of woolgrowers, including my own.

THOMAS SCOTT, having been duly sworn, was examined as follows:

144 By the DISTRICT ATTORNEY:

Q. Where do you live?

A. In New York City.

Q. In what business are you engaged?

A. The wool business.

Q. You are familiar with the article that is before you in the glass jar as an article of trade?

A. I am yes, sir.

Q. For how many years have you been engaged in that business?

A. Thirty.

Q. Please state under what name the article before you was bought and sold and used in the trade.

A. Angora, or mohair.

Q. What is the ordinary form in which Angora hair or wool is introduced into this country?

A. Generally in the fleece or on the skin.

Q. To what process, if you know, has the article before you in the glass jar been subjected, if any?

A. That has been pulled from the skin.

Q. Has it been subjected to any chemical process?

A. Yes, sir; undoubtedly it has been subjected to the liming process.

145 By the COURT:

Q. The object of the liming is what?

A. To take it from the skin. There are three or four different processes.

Cross-examination by Mr. WHITE:

Q. Did you say that you were in the habit of dealing in material exactly like that?

A. No, sir. I deal in mohair.

Q. You are a dealer in mohair?

A. I have dealt in it.

Q. But you are not a dealer in the article in that glass jar in the condition just as it is there?

A. Not just as it is there; no, sir.

Q. The article that you deal in is in the fleece like that under your hand?

A. I have dealt in it, also in noils, and I have dealt in it when it was as poor as that by moths destroying it, and I have had it so long on hand, when it has been held for the market, that it has been reduced to a kind of pulp no better than that.

Q. I do not ask you about the quality, but that material you do not deal in at all?

A. No, sir.

146 JOSHUA WRIGHT, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where you live?

A. In Washington County, Pennsylvania.

Q. What is your occupation?

A. I was born a woolgrower, raised a woolgrower, and was a woolbuyer for thirty years. At present I am in the banking business.

Q. To what extent were you engaged in the woolgrowing business?

A. At one time I was quite largely interested in it out in our Western country. I have owned as high as 5,000 sheep at a time. I had them out on shares in various parts. My own farm flock consisted of about 500.

Q. You are familiar with the product from the wool-bearing animals, especially goats?

A. I have made it a study for many years. I have got somewhat rusty in it latterly.

Q. Look at the sample before you, in the glass jar, produced by the defendant in suit. You have examined it very carefully, have you not?

147 A. In our country we have had very little experience in that kind of hair or wool. There was a flock of these imported there by John Gow, and brought into our county perhaps in 1872, or along there, and afterwards by another man in another part of the county.

Q. You are familiar with that article?

A. Not very. I have seen them frequently, but I can't say that I am familiar with them.

Q. What is that?

(Objected to.)

Q. Have you examined at any time various kinds of goat hair?

A. Yes, sir.

Q. To what extent?

A. When I lived on a farm I was very particular in examining the fibers of wool. After I viewed it with the naked eye I would take it under a microscope.

Q. I refer, however, to goat hair?

A. I have no experience in hair, only as these Angora goats were brought into our county.

By the COURT:

Q. What experience have you had with their hair?

A. I have examined those frequently.

Q. Alive?

A. Yes, sir; alive.

Q. And with the hair taken off?

148 A. No, sir; alive.

Q. What examination did you make of the hair of the goat?

A. I have looked at it under the glass, and it has a wool property. We look at it as we would wool. It is different from dog hair.

Q. Did you compare it with the hair of our common goat?

A. I have never done that until I came here. Under the microscope while here is all that I ever saw it to compare it with other goats.

Q. You have compared it here with the hair of the goat?

A. Yes, sir.

Q. How do you know that it was the hair of a goat?

A. It was said so, and by looking at it under the glass we could see that it was not the same.

Q. Could you tell by looking at it that it was the hair of a common goat?

A. Not with the naked eye, I couldn't.

By the DISTRICT ATTORNEY:

Q. From your knowledge of the Angora goat are you able to state whether the subject-matter of this suit is Angora goat hair?

(Objected to.)

149 Cross-examined on this point:

By Mr. WHITE:

Q. When did these gentlemen have Angora goats in your county?

A. The first was brought, according to my recollection, about 1872, and the others were brought, perhaps, since that time by McNally. I saw them at different times.

Q. How long ago was it that you saw the last Angora goats?
A. Perhaps five years.
Q. How many examinations did you make of them?
A. I couldn't tell you that.

By the COURT:

Q. Did you make several?
A. Yes, sir.

By Mr. WHITE:

Q. You do not yourself imagine that you are expert enough, from the examinations which you have made, to speak of what is Angora goat hair and what is not?
A. Under the glass I can tell you.
Q. How many of these goats did you examine the fleece of at all?
A. I couldn't say; perhaps twenty, perhaps 100.
Q. You just took the hair from the particular goat and examined it under the microscope?
150 A. Yes, sir.
Q. Had you any experience in comparing that with other goats?
A. No, sir; not until I came here.
Q. You mean that here there were some samples shown to you by the Government, which they told you were goat hair?
A. Yes, sir.
Q. And you know nothing about them except that they were put before you as goat hair?
A. Yes, sir.
Q. And that was for the particular purposes of this case?
A. For the purpose of comparison, whether this was goat hair or not.
Q. They furnished you the thing you were to compare it with?
A. Yes, sir.

By the COURT:

Q. Have you got that there?
A. We have it in the other room. You put it under the microscope, and that will convince anybody.

By the DISTRICT ATTORNEY:

Q. Do you remember whether that was the sample of common
151 goat hair? (Referring to defendant's sample No. 1.)
A. Yes, sir; we looked at that. I think that is the one.

By Mr. WHITE:

Q. You say that is the sample that you saw?
A. I think that is the one that we looked at.
Q. You said very positively that it was. I wanted to ask you how you judged it at that distance?
A. I saw the dark color and presumed it was the same. Of course I don't know.

By the DISTRICT ATTORNEY:

Q. That sample of the article in suit—what is it?
A. I have no hesitancy in saying that it is from the Angora goat. It is low grade.

Q. It is low grade Angora goat hair?
A. Yes, sir.

Cross-examination by Mr. WHITE:

Q. How many other kinds of goats have hair just like the Angora goat?
A. I don't think there is any.
Q. Do you know?
A. No; I don't know, but I don't think there is.

Q. And because you examined these particular goats in your
152 county you undertake to say what is Angora goat hair generally.
A. Of course I do. There are no two of them just exactly alike; that is, no two of Angora goats, or any other wool or hair-growing animals.

By the COURT:

Q. Do you say that the hair of two Angora goats is not the same?
A. I say that the hair is the same, but their appearance would be somewhat different.
Q. Do you mean under the microscope?
A. Yes, sir, or elsewhere.

By Mr. WHITE:

Q. What is the difference between this hair and what you saw under the microscope—I mean that in the glass jar; do you mean to say that the Angora goat hair that you saw compared with that in length?
A. No, sir.
Q. And in strength?
A. No, sir, nor in strength.
Q. Or in oiliness or fiber?
A. No, sir.
Q. It was different in all those things?
A. Yes, sir. This has been limed.
Q. How do you know that it has been limed?
A. From the harshy appearance.

153 Q. Are you sure that the harsh appearance does not come from something else?
A. I have seen so much wool taken off the fleece by lime that I judge by that.
Q. Do you undertake to swear that that was limed?
A. I believe it was.

WILLIAM A. HERRIOTT, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?
A. In western Pennsylvania; Allegheny County.
Q. Have you been connected with the wool industry?
A. Yes, sir.
Q. To what extent?
A. I have been a wool dealer and a wool producer.

Q. For how many years?

A. I have been a wool producer since my childhood—since I could pick up a lamb.

Q. Have you examined the article before you, in the glass jar, defendant's sample?

A. I have; yes, sir.

Q. You have had experience in handling and dealing with the hair of the goat?

A. Slightly.

154 Q. How much?

A. There were importations made back, at times I can not recall.

By the COURT:

Q. State to what extent you have examined hair of the Angora goat.

A. I have been examining it more or less ever since the importations were made into our country.

Q. Many times or few?

A. Many times.

Q. To what extent have you examined it—did you examine it under the microscope, or with the naked eye?

A. Both ways.

Q. On the goat or off the goat?

A. Both ways.

Q. Have you examined it in connection with the hair of the common goat?

A. I have examined it in connection with the hair of the common goat, and also in connection with other fibers.

Q. What other fibers?

A. Wool and hair.

By the DISTRICT ATTORNEY:

Q. What is the article before you, in the glass jar, which is the subject of this suit?

155 A. I should say, from the examination that I have made, that it is a low grade of Angora.

Cross-examination by Mr. WHITE:

Q. Where did you ever examine Angora hair?

A. I examined it on the animal and off of it.

Q. Where?

A. At our home, in the western part of the State.

Q. How many Angora goats had you there?

A. As to the number I couldn't say positively. I presume that there were probably 1,000 of them there.

Q. 1,000 Angora goats?

A. Yes, sir; in the different flocks in the neighborhood.

Q. What length was the fleece upon those goats?

A. That varied as to the animal and the condition.

Q. Was there any of it that was in the same condition as the stuff in that jar—the same length as to fiber, the same appearance, the same condition, and the same feel?

A. I have never examined any that had exactly the same feel off the living animal, or that was taken off the skin, but I have found similar samples to those frequently from animals which had got down in condition.

Q. Were those samples that you took yourself?

156 A. Samples that I examined.

Q. Were they samples that you took yourself—that is, did you take the samples from the goat yourself?

A. I know that it was taken from the goat.

Q. I ask you whether you took it yourself from the goat?

A. I have seen it taken from the goat.

Q. Have you ever seen a sample taken from the goat in its natural condition that looked like that?

A. I have seen samples similar to that, as I answered your question before, that had come off animals whose condition had run down.

Q. You never dealt in this article, did you?

A. Not directly.

Q. When you say "not directly" what do you mean?

A. I mean that there was not enough of it to make it an article of commerce in our neighborhood.

Q. I ask you whether you ever dealt in that article in that jar—ever sold it?

A. No, sir.

ROBERT WYLIE, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

157 A. Washington County, Pennsylvania.

Q. What has been your occupation?

A. Farmer and wool grower in a small way, and wool dealer in a small way.

Q. Have you or not had experience in handling the hair of the goat?

A. I have not had a great deal of experience. We had a few flocks there.

(The court rules that this witness is not a competent expert. Exception by the Government.)

JOHN MCDOWELL, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. In Washington County, Pennsylvania.

Q. Are you a wool grower?

The COURT. I will rule that question out, on the ground that the inquiry here is about hair.

(Exception by the Government.)

Q. What knowledge have you of the article known as the Government sample in this suit?

158 A. I have examined it. It is, according to my knowledge, a low grade of Angora goat. It has gone through the process of liming. It is different somewhat from that of cattle hair, of which I have handled

considerable. I am a laboring man, and I have attended masons and mixed mortar, and have used the hair off of hides for the mixing in of the lime. It is something singular that hair used for plastering purposes, the end of the hair has a point on it. In cattle hair that point is taken off, more so—for what reason I don't know—than I find in this article. I find little—well, I will say that there is no cattle hair in it.

Q. Are you familiar with the fleece of the Angora goat also?

A. We have had and have yet the Angora goat in our county. I have examined them on the fleece—I have examined them on the sheep, with a view of purchasing them myself.

Q. From your knowledge of the Angora goat and its fleece, and from your knowledge of common cow hair, and an examination of the sample in this suit, you say that that is low grade Angora goat hair?

159 A. Yes, sir. It is the separated product of the fleece?

Cross-examination by Mr. WHITE:

Q. That is your opinion. Have you ever dealt in that article?

A. I have never dealt in the article. All I did was to make an examination to find out the difference.

(Counsel for defendant offers in evidence samples heretofore identified.)

160 *Plaintiff's rebuttal evidence.*

JAMES DOBSON, recalled.

By Mr. WHITE:

Q. I believe you are one of the largest importers of mohair or Angora fleece?

A. Yes, sir.

Q. Tell us whether there are different grades of that, and what are the grades. What is low grade, for instance?

A. Low grade would be the first cross of Angora above common goat.

By the COURT:

Q. It would be an impure grade?

A. It would be impure; yes, sir.

By Mr. WHITE:

Q. You are familiar with the usage as to Angora goats in this country. Are they pure bred, or not?

A. No, sir; they are not pure bred; not as a class. They did import a few bucks a few years ago. Of course they have degenerated.

Q. Crossed with the common goat?

A. Yes, sir.

161 Q. And are they still called Angora goats no matter how often they are crossed?

A. Yes, sir.

Q. Who was the examiner who classed the six invoices of this lot of goods?

(Objected to.)

The COURT. Is the object to show that it is the same gentleman?

Mr. WHITE. Yes.

The COURT. You can show it.

By Mr. WHITE:

Q. How do you know it is the same?

A. Because Mr. Taggart was the examiner of wools.

By the COURT:

Q. He was the examiner at that time?

A. At that time, yes.

Plaintiff rests.

162 The COURT. As I understand the protest the plaintiffs say this is common goat hair and not fit for combing; in other words, it is not mohair. I had not the protest before me when I considered the subject last night.

My view of the law, which I am justified in stating now because of the amount of discussion upon the subject, is that the distinction is presented by the protest, which the plaintiffs allege now as they did before in the protest, that this is what is known as common goat hair, that it is not combing hair, and if they establish that proposition they are, in the opinion of the court, entitled to a verdict. Common goat hair, as the court has held in the case referred to, does not belong to this classification under which the duty was laid, and if this, as the plaintiffs allege, is not combing hair, whether it is common hair or not, they are entitled to a verdict. So that they may be regarded as having presented two propositions in their protest. If they establish either of them they are entitled to a verdict. It is a fact for the jury to ascertain whether this is common goat hair or whether it is combing hair, and I think I shou'd say to the jury, as was said in the other case, that if it is common hair

163 it is not within the statute, and if it is not common hair, but some other kind of hair, and is not combing hair, it is not liable to the duty imposed. All that was really decided in the case of McNeil vs. the Government was that common goat hair is not within the statute.

The DISTRICT ATTORNEY. Of course it is not alleged by the defendant here that this particular importation is fit for combing. The contention of the Government is that it is Angora hair.

The COURT. I shall say to the jury it is for them to ascertain first whether it is common goat hair. If it is, the verdict must be for the plaintiffs. Next, if they find it is not common goat hair, then the question arises whether it is what is known in the trade as combing hair.

Testimony closed.

During the course of the district attorney's argument to the jury, referring to their construction of the statute, the court said:

The COURT. The jury must not understand that it has anything to do with the construction of this statute.

164 The DISTRICT ATTORNEY. I am not talking about the law, but it seems to me I have a right to illustrate my argument by a reference to the statute.

The COURT. I have said already, and there can be no reason for any misunderstanding between yourself and the court, that inasmuch as the duty was upon the court of determining the law of this case it has already determined it, and so that counsel might know how to address themselves to the jury, and the first question will be, is this common goat hair as distinguished from the hair of the Angora goat? If it is common goat hair the

verdict must be for plaintiffs. If the jury finds that it is not common goat hair, then the court will charge the jury that the next question is, is it combing hair? The court will explain to the jury what is meant by combing hair, and will say that though it be not common goat hair if it is not combing hair, still the verdict must be for plaintiffs. The jury, therefore, will not have before them questions of law or the construction of the statute.

The DISTRICT ATTORNEY. It may be that I do not understand your honor, but it does seem to me that I have a duty to discharge to explain to this jury the position which the Government occupies in this
165 case, and I do not do it for the purpose of interfering with the prerogative of the court, and in doing that it seemed to me to be perfectly proper for me to refer to the language of the statute as showing the reason that controlled the Government officer in making this appraisement, because if there is a doubt in the minds of the jury as to the plaintiffs' contention upon either one of the propositions mentioned by the court, your honor would be obliged to tell them it is their duty to sustain the appraisement made by the Government's officers.

The COURT. The court would tell the jury that the burden of proof was upon the plaintiffs, that is all. I only call attention to what you are saying because of the difficulty that we all experience of obtaining an intelligent verdict upon questions proper for a jury's deliberation, and when questions which are not properly involved in the consideration of the facts are discussed before the jury the effect would be to increase the danger that the parties would not get such a verdict as they are entitled to have.

The DISTRICT ATTORNEY. The question presented by the Government to a certain extent, in my judgment, should be considered in con-
166 nection with the clause of the statute which is the next but one to that under which the plaintiffs claim, and I say that because I believe it is confirmation of the view I have expressed that Congress meant to tax the hair, or, as they say, the wool, of the Angora goat. The language of that section of the statute is: "Hides, raw or uncured, whether dry, salted, or pickled, and skins except sheep skins with the wool on." That is to say, that skins with the wool on were not to be admitted free. "Angora goat skins, raw, without the wool." Inferentially that when Angora goat skins had, as Congress said, the wool on, using the words "wool" and "hair" as convertible terms, then the Angora goat skin with that which Congress called "wool" on it was not to be admitted free. I do not think Congress could have said in any plainer terms what was their intention than by the words they use there that if a custom-house officer found at the port of entry an Angora goat skin, and Mr. Dobson said just before the close of this case that they were called Angora goat skins or Angora goat no matter what their degree might be; also, some of the witnesses for plaintiff testifying in the same direction, and I do not think there is any misunderstanding between the importer and the
167 United States and the witnesses for plaintiffs and for defendant upon that point, that it is called Angora goat skin if it has the Angora blood in it, just as a sheep is called Merino if it has a strain of Merino blood in it—that being so, the plain intention of the legislator was to tax these Angora goat skins with the wool or, it does seem to me in my view of the statute that it then becomes a question in this case whether the

wool or hair presented for the investigation of this court is Angora wool or Angora hair. Your honor will observe, and it is rather remarkable because it is the only place where I have noticed in the tariff statute, that Congress does use the word "wool" as applied to the hair of the Angora goat. There was not a witness, I think, produced by plaintiffs but who called the fleece of the Angora goat either fleece or mohair or mohair noil. So it would seem to me to be justifiable for me to urge upon your honor that when Congress used those words it meant to tax a specific thing according to what it actually was, not what somebody called it; and that is one of the reasons why I feel justified in urging the view that I have entertained all through the investigation of this subject that Congress has shown, and it appears, it seems to me, by taking that section, class
168 2, combing wools, and reading it in connection with 719, an intention and must have meant to impose a tax upon that which comes from the hide of the Angora goat, the witnesses calling it mohair, the Government in so many words calling it wool.

The COURT. This is your second point, and I may say that there is no doubt whatever that the hair of the Angora goat, where it is combing hair, is subject to taxation. This provision is one that relieves the importer from taxation. He was before taxed upon the wool of the Angora goat, which is combing wool, and all wool of the Angora goat may not be combing wool.

The DISTRICT ATTORNEY. The Congress has also passed a section of the tariff act in which they have stated how the tax upon that wool should be ascertained, and they do not say a word in that section about combing wools. Referring to 719 as the original proposition as to wools on the skin; the same rates as other wools, the quantity and value to be ascertained under such rules as the Secretary of the Treasury may prescribe.

The COURT. Certain wools on the skin shall be taxed precisely as the wools are taxed when taken off the skin, that is all.

The DISTRICT ATTORNEY. Then Congress having taken from
169 the free list the Angora goat skins with the wool on, having in so many words said that they shall not be admitted free——

The COURT. I am at a loss to see how you so read the statute. Congress has not made in terms, or in my judgment, impliedly, all the hair of the Alpaca goat dutiable. All the skins that may be brought in of the Alpaca goat with wool on are not, therefore, dutiable, and this section upon which you are relying for an interpretation of the preceding section simply makes all skin that has been denuded of the wool free of duty; in other words, it relieves those skins which bore combing wool and were subject to duty from duty if the wool is taken off.

The DISTRICT ATTORNEY. There is where I differ. I think it has this effect: That Congress has said hides or skins shall be admitted free, but so that the importer may know what Congress means it says this: "But no sheep skin with the wool on shall come in free, but Angora goat skins without the wool may come in free." I am reading now 719 from the tariff act itself. Congress says generally that hides may come in free in a certain condition, but sheep skins with the wool
170 on shall not. That is very clear, it seems to me. All goat skins without the wool may also come in free. Now is it not clear that Congress meant to say that Angora goat skins with the wool on should not come in free?

The COURT. I cannot so see it. That was the point presented to me last night and I looked at it with all the care I could. I think the reading that you make of this subsequent clause is inconsistent with the construction of the preceding language designating that the second class. I do not see it, and we will have to leave that probably for further consideration. I do not believe I shall adopt a different view, but of course I should be very willing to hear you after, and you will have the opportunity of review.

The DISTRICT ATTORNEY. I think it is as well, and all I have to ask, so far as that is concerned, and other points which have fairly come up in the trial of the case, is that it may be put in such a form so it can be reviewed if your honor is wrong. It is as important to the importer as it is to the Government to have the statute well understood.

The COURT. (To Mr. White.) I will hear your views, as I have heard those upon the other side, upon the statute. You will observe the words of 768, class 2, &c. "And also all hair of the alpaca, common goat,
171 and other like animals." It is argued that that language includes in this all goat hair. That was decided in a former case. Now it is argued that if the jury find this to be the hair of the Angora goat then, under the force of 1132, which was read, it is to be held that the language previously read "All hair of the goat" certainly includes the hair of the Angora goat, and that if this is Angora goat hair then it is liable to the duty imposed.

Mr. WHITE. The language is, "Hides raw or uncured, whether dry, salted, or pickled, and skins, except sheeps-skins, with the wool on; Angora goatskins, raw, without the wool unmanufactured, and asses' skins, raw or unmanufactured."

The COURT. Thus it is provided that Angora goatskins, raw, without the wool on and unmanufactured, come in free. Now, counsel says that if that is so the preceding provision, which relates to and classifies wool as hair, must include the hair of the Angora goat; otherwise there would be no sense in this latter part.

Mr. WHITE. But the general section says that hair generally, hair of all kinds, shall come in free. It is nowhere said that the Angora hair is to be taxed, and in section 2 the Government itself holds that "Combing wool, and wool of the alpaca goat." It is true there is a comma
172 there, but I understand that it has been supposed that meant the alpaca goat, and if you will look at the late amendment to the tariff you will find where it is intended to tax the hair the word "combing" is stricken out, and you no longer find the words "alpaca goat" in that section. I do not see how there can be any doubt in reading section 717, which admits hair generally, hair of all kinds, cleaned or uncleaned, drawn or undrawn, but unmanufactured, and not specially enumerated or provided for in this act. Now, I do not find anywhere that Angora goat is specially provided for in this act as dutiable. But above and beyond that, I submit the question is whether this is commercially known as Angora hair, and that seems to me to be too clear for argument.

The COURT. The question here occurred to me to be divisible under your protest; first, whether it is common hair as distinguished from alpaca hair or combing hair. Of course if it is common hair the court, to be consistent with its former ruling, must instruct the jury that it is not

dutiable. But suppose the jury should give an opinion that it is not common hair and is something else, but at the same time be of opinion under the evidence that it is not combing hair, still the court would have
173 to instruct the jury to find for plaintiffs, because such are the questions raised by the protest.

Mr. WHITE. It seems to me that the very heading of that section is conclusive upon that point. It seems to me that the only safe rule of construction is that which the court has always adopted that Congress intends to deal with the thing which manufacturers and merchants deal in and are treating them by their names. There is another thing I wish to call your honor's attention to, and that is that the Department has already decided that goatskins from animals of Angora blood in a small degree, but worth no more than common goatskins, are not precluded from free entry. I merely call attention to that because I understood the district attorney to hold to a different view.

174 BUTLER, J. (charging orally):

Gentlemen of the jury: The plaintiffs in this case imported this merchandise, the hair from which the specimen or sample before you was taken, into this port and entered it at the custom-house as goat or cattle hair free of duty under a section of the tariff law. The Government appraiser, whose duty it was to examine and pass upon the question, disagreed with the importers and classified the hair as belonging to Class 2, that section reading as follows: "Class 2. Combing wool; that is to say, Leicester, Cotswold, Lincolnshire, Down combing wool, Canada long wool, or other like combing wool of English blood, usually known by the terms herein used, and also all hair of the alpaca goat and other like animals." The plaintiffs protested against this classification, adhering to their original claim, that this is common hair, not combing hair, appealed unsuccessfully from the action of the appraiser, eventually paid the money demanded by the Government, and then brought this suit to recover it back. The questions presented are, first, is this common goat or cattle hair, as distinguished from mohair or combing hair? Is it what is known to commerce, to those who deal in the article, as common or cattle hair? That is the first question, and you are to decide it by the evidence. You
175 have heard this. It does not cover a great space and is readily understood. It has been explained and commented upon by counsel and you are to say how the question should be decided. [Are you satisfied that this article is what is known to commerce, to those who deal in such hair, as common goat hair or cattle hair? If you find it is, your verdict will be for the plaintiffs for the amount of their claim; because if it is such common hair it is not to be classified under the section applied to it by the appraiser.] Exception for defendant. [I repeat, if the evidence satisfies your minds that this is what is called common goat hair or cattle hair by the trade, then your verdict should be for the plaintiffs for the amount of their claim.] Exception for defendant.

[If you are not satisfied that it is such common hair, known to commerce by that designation, then a second question arises, to-wit: Is this what is known to commerce as combing hair? If it is not (though it be something else than common hair), it was wrongfully classified. It could only be classified as the Government classified it, on the ground that it is combing hair.] Exception for defendant. [Thus, if you are not satisfied that

it is what is called such common hair, and do not find a verdict for
176 the plaintiffs upon that ground, then you pass to the second question, and determine whether or not it is combing hair; because, if it is not combing hair, the plaintiffs are entitled to your verdict for the amount of their claim, although it be not such common hair, as before described. It can only be classified as it has been, upon the ground that it is combing hair. If it was cattle or common hair it was not combing hair, and if it is not common hair, but still not combing hair, the plaintiffs are entitled to a verdict.] Exception for defendant. Upon the question of combing hair, is there any evidence at all that it is such hair? A number of witnesses testified that it is not. They told you the characteristics of combing hair; that it is a long hair like the long alpaca hair which is before you; that combing hair or combing wool is a hair or wool of long fiber, which can be combed out, leaving the short hair that grows near the skin at the bottom of the hair as a sort of refuse.

Thus you have before you all there is in this case. Have the plaintiffs satisfied you that this is what is known to commerce as common hair as distinguished from combing hair or mohair? If they have, your verdict will be in their favor. [If they have not satisfied you of that, still if they have satisfied you that this is not combing hair (and there is
177 no answer to their evidence that it is not, as I remember) your verdict should be for the plaintiffs.] Exception for defendants.

The points presented by the defendant I can not affirm. They may be marked severally disaffirmed.

The verdict was for plaintiffs for the amount of their claim.

178 1. If you believe that the article in suit is hair of the goat and under thirty cents per pound, then your verdict should be for defendant. Disaffirmed. Exception for def't.

2. If you believe that the article in suit is goat hair, under thirty cents per pound, which would in its ordinary condition be suitable for combing purposes, but was rendered unfit for combing by a liming or other process, then your verdict should be for the defendant. Disaffirmed. Exception for def't.

3. If you believe that the article in suit is Angora goat hair of a low grade under thirty cents per pound, then your verdict should be for the defendant. Disaffirmed. Exception for def't.

4. Your verdict in this case should be for the defendant. Disaffirmed. Exception for def't.

5. If the jury find from the evidence that the merchandise on which the plaintiff paid duties, for the recovery of which this action is brought, was hair or wool taken from Angora goats, then its dutiable character is determined by blood; that is by the kind of animal generally and scientifically known as the Angora goat, and not any commercial designation which may assign to it a different character. Disaffirmed. Exception for def't.

179 And thereupon, the counsel for the said defendant did then and there except to the aforesaid charge and opinion of the said court.

The said counsel for the said defendant did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the afore-

said judge at the request of the said counsel for the defendant did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this first day of May, A. D. 1891.

WM. BUTLER, *J.*

(Endorsed:) No. 47. October sess., 1890, C. C. U. S., E. D. of Pa. Dobson et al. vs. Cooper, collector, &c. Bill of exceptions. Filed May 1, 1891.

180 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of John Dobson and James Dobson, copartners, trading as John and James Dobson, vs. Thomas V. Cooper, collector of customs for the district of Philadelphia, No. 47, October session, 1890, on file, and now remaining among the records of the said court, in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this day of May, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

181 [Copy.]

THOMAS V. COOPER, COLLECTOR OF CUSTOMS, &c., plaintiffs in error,
vs.
JOHN DOBSON ET AL., DEFENDANTS IN ERROR, U. S. Supreme Court.

Assignments of error.

And now, to wit, May 13th, 1891, Thomas V. Cooper, collector of the port of Philadelphia and plaintiff in error in the above case, by his attorney, John R. Read, esq., files the following assignments of error:

1. The learned court erred in overruling the defendant's objection to the following question and in admitting the answer thereto (page 37): Q. What was it invoiced at and passed at by the Government officers?—A. Class 3, invoiced at as cattle or goat hair.

2. The learned court erred in sustaining the plaintiff's objection to the following question and excluding the answer thereto (page 53): Q. If you were told as a matter of fact that there was no difference between the physical structure of the Angora goat hair or mohair noil and the Dobson sample, but a vast difference between those two and the common
182 goat hair and the hair of the mountain goat, would you still persist in saying that the Dobson was not Angora goat hair?

3. The learned court erred in overruling the defendant's objection to the following question and in admitting the answer thereto (page 75): Q. What is that skin?—A. That is the skin of an Angora.

4. The learned court erred in excluding the answer to the following question of the defendant (page 157): Q. Are you a wool-grower? The Court: I will rule that question out on the ground that the inquiry here is about hair.

5. The learned court erred in charging the jury as follows (page 175): "Are you satisfied that this article is what is known to commerce to those who deal in such hair as common goat hair or cattle hair? If you find it is, your verdict will be for the plaintiffs for the amount of their claim; because if it is such common hair it is not to be classified under the section applied to it by the appraiser."

6. The learned court erred in charging the jury as follows (page 175): "I repeat, if the evidence satisfies your minds that this is what is called common goat or cattle hair by the trade, then your verdict should be for the plaintiffs for the amount of their claim."

7. The learned court erred in charging the jury as follows: "If you are not satisfied that it is such common hair known to commerce
183 by that designation, then a second question arises, to wit, is this what is known to commerce as combing hair? If it is not (though it be something else than common hair) it was wrongfully classified. It could only be classified as the Government classified it, on the ground that it is combing hair."

8. The learned court erred in charging the jury as follows (page 175, 176): "Thus, if you are not satisfied that it is what is called such common hair and do not find a verdict for the plaintiffs upon that ground, then you pass to the second question and determine whether or not it is combing hair, because if it is not combing hair the plaintiffs are entitled to your verdict for the amount of their claim, although it be not such common hair as before described. It can only be classified as it has been upon the ground that it is combing hair. If it was cattle hair or common hair it was not combing hair; if it is not common hair but still not combing hair the plaintiffs are entitled to a verdict."

9. The learned court erred in charging the jury as follows (page 176): "If they have not satisfied you of that; still, if they have satisfied you that it is not combing hair, and there is no answer to their evidence that it is not, as I remember, your verdict should be for the plaintiffs."

10. The learned court erred in disaffirming the first point of the defendant as follows (page 178): "If you believe that the article in suit
184 is hair of the goat and under thirty cents per pound, then your verdict should be for the defendant."

11. The learned court erred in disaffirming the second point of the defendant as follows (page 178): "If you believe that the article in suit is goat hair under thirty cents per pound, which would in its ordinary condition be suitable for combing purposes, but was rendered unfit for combing by a liming or other process, then your verdict should be for the defendant."

12. The learned court erred in disaffirming the third point of the defendant as follows (page 178): "If you believe that the article in suit is Angora goat hair of a low grade under thirty cents per pound, then your verdict should be for the defendant."

13. The learned court erred in disaffirming the fourth point of the defendant as follows (page 178): "Your verdict in this case should be for the defendant."

14. The learned court erred in disaffirming the fifth point of the defendant as follows (page 178): "If the jury find from the evidence that the merchandise on which the plaintiffs paid duties, for the recovery of which this action is brought, was hair or wool taken from Angora goats, then its dutiable character is determined by blood; that is, by the kind of animal generally and scientifically known as the Angora goat, and
185 not any commercial designation which may assign to it a different character."

(Indorsement on cover:) No. 179. 14656. Thomas V. Cooper, collector of customs for the district of Philadelphia, plaintiff in error, *vs.* John Dobson & James Dobson, copartners, trading as John & James Dobson. E. Pennsylvania, C. C. U. S. Filed May 21, 1891.

D-7-148

Office Supreme Court, U. S.
FILED.
JAN 7 1895
JAMES H. McKENNEY,
Clerk.

CASE No. 14656.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

THOMAS V. COOPER, COLLECTOR OF customs for the district of Philadelphia, plaintiff in error,
vs.
JOHN DOBSON ET AL.
No. 179.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

THOMAS V. COOPER, COLLECTOR OF customs for the district of Philadelphia, plaintiff in error,
vs.
JOHN DOBSON ET AL.

No. 179.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

This was an action to recover duties paid under protest. The importations were made in February, 1890, so that the case is governed by the tariff law of 1883. The action was tried April 8, 1891, before Judge Butler and a jury. A verdict was found in favor of the importers, and the collector assigns error.

STATEMENT OF FACTS.

The goods in question were invoiced as white cattle hair, but described in the protest as common goat hair (p.

6). They were designated by the custom-house authorities as Angora goat hair (p. 7). Their value is admitted to have been 10 cents a pound (p. 7).

The evidence is of the usual expert character. The testimony on behalf of the importers was self-contradictory in some respects. As to the *true nature of the hair*, one witness conceded that it might have been Angora (p. 33); another said it was hair of the common goat (p. 48); another said it was cow hair and never was near any goat (p. 40); another said it was probably mixed hair, the cow predominant (p. 32). As to its *commercial designation*, the importer's testimony was also self-contradictory. One witness said it was called goat hair, or common goat hair (p. 35), which, commercially speaking, "does not mean the hair of the common goat, but it means common goat hair," as interpreted by the next preceding witness (p. 35); others said it was "hair from the common goat" (pp. 44, 49); another that it was generally called cow hair, sometimes goat hair, or just "hair" (pp. 38, 40); another that it was called cattle hair or simply "hair" (p. 46); others that it was called cattle hair or sometimes goat hair (pp. 32, 40); one said that it was called goat hair or cattle hair either, "according to a person's likes or dislikes" (pp. 46, 47); while plaintiff testified that it was called goat hair, common goat hair, cattle hair, or kid hair (p. 8). The testimony of plaintiff's witnesses was further to the effect that hair of this quality would receive the same designation, whether from the Angora goat or not (pp. 33, 43). The *use* of these imported articles was frankly admitted. They are used solely as an

adulterant for carpet wools of class 3 (pp. 11, 13, 43). They meet this honest purpose to the great satisfaction of the manufacturers. One of plaintiff's witnesses claims that carpets thus adulterated will pass a very high test as compared with carpets made of "mohair noils" (or the short hairs of the Angora goat obtained by combing and not injured by the use of chemicals):

> You might know the difference if you were an expert. If *your wife* went into the store she would not probably know the difference between the two cloths, and she would probably buy one for the other (p. 16).

None of the importers' witnesses seem to have made any real scientific examination of the imported hair. The collector's evidence shows clearly that it was a low grade of Angora. Some of his witnesses made a careful microscopic investigation of the hair, among them Dr. Thomas Taylor, chief of the division of microscopy of the Department of Agriculture, and Hon. William Lawrence, formerly First Comptroller of the Treasury (pp. 55, 57). An attempt was made to break the force of this evidence by claiming that all goats when crossed with the Angora are called Angora goats in this country (p. 65). But Judge Lawrence states that he made his microscopic examination from the Government sample of Angora goat hair (p. 57), which was official in character (Tariff of 1890, par. 379), and therefore doubtless correct. As to commercial designation, one of the collector's witnesses testified that the hair would be called mohair or Angora (p. 58), while another denied this and stated that it would be

called simply goat hair or cattle hair on account of its quality, even though it were in fact Angora (p. 53).

It was uncontradicted that the hair had been treated with lime for the purpose of pulling it from the skin after the death of the goat, and that it was, therefore, unfit for combing purposes (pp. 11, 33, 50, 57, 59).

ASSIGNMENTS OF ERROR.

We call the attention of the court to the following exceptions, all of which are included among the assignments of error in the record:

Refusals to charge.—We call particular attention to the following:

> 1. If you believe that the article in suit is *hair of the goat* and under 30 cents per pound, then your verdict should be for defendant. Disaffirmed. Exception for defendant (p. 71).
>
> 3. If you believe that the article in suit is *Angora goat hair* of a low grade under 30 cents per pound, then your verdict should be for the defendant. Disaffirmed. Exception for defendant (p. 71).

Instructions to jury.—We call attention to the following paragraphs of the charge, each of which is separately excepted to:

> 1. Are you satisfied that this article is what is *known to commerce*, to those who deal in such hair, *as common goat hair or* cattle hair? If you find it is, your verdict will be for the plaintiffs for the amount of their claim; because if it is such common hair it is not to be classified under the section applied to it by the appraiser (p. 70).
>
> 2. I repeat, if the evidence satisfies your minds that this is what is called *common goat hair or* cattle

hair by the trade, then your verdict should be for the plaintiffs for the amount of their claim (p. 70).

3. *If you are not satisfied that it is such common hair*, known to commerce by that designation, then *a second question arises*, to wit: Is this what is known to commerce as *combing hair*? If it is not (though it be something else than common hair), it was wrongfully classified. It could only be classified as the Government classified it, on the ground that it is combing hair (p. 70).

4. Thus, if you are not satisfied that it is what is called such common hair, and do not find a verdict for the plaintiffs upon that ground, then you pass to the second question, and determine whether or not it is combing hair; because if it is not combing hair the plaintiffs are entitled to your verdict for the amount of their claim, although it be not such common hair as before described. It can only be classified as it has been, upon the ground that it is combing hair. *If it was cattle or common hair it was not combing hair, and if it is not common hair, but still not combing hair, the plaintiffs are entitled to a verdict* (pp. 70–71).

5. If they have not satisfied you of that [that it is common hair], still if they have satisfied you that this is *not combing hair* (and there is no answer to their evidence that it is not, as I remember), your verdict should be for the plaintiffs (p. 71).

Erroneous admission of evidence.—We call the court's attention to the following passage from the redirect examination of James Dobson, one of the plaintiffs:

Q. Mr. Dobson, up until this time what has been the acceptance of the trade——

(Mr. Read objects to the form of the question.)

Q. What has it been?

A. Common goat hair.

Q. How many importations have you made of it before this?

A. I think six or seven importations.

Q. Of that particular lot?

A. Yes, sir.

Q. *What was it invoiced at and passed at by the Government officers?*

(Objected to by Mr. Read. Objection overruled. Exception noted for Mr. Read.)

A. Class 3; invoiced as cattle or goat hair (pp. 13–14).

HISTORY AND PAST INTERPRETATION OF TARIFF PROVISIONS.

The case at bar arose, as above stated, under the tariff of 1883.[1] As will hereafter be shown, that act had already been construed by Judge Butler and by the Attorney General so as to place common goat hair upon the free list. In consequence of this decision, its language was somewhat altered by the act of 1890. The differences between the two acts have been clearly stated by Mr. Justice Gray in his opinion in *United States* v. *Hopewell* (5 U. S. App., 137, 148), a case arising under the latter. We quote from him as follows (changing only the paragraph numbers, which in the act of 1890 are 375–8 instead of 352–5):

> The material provisions of paragraphs 375–378 of Schedule K of the tariff act of 1890, and of the corresponding paragraphs of the same schedule of the act of 1883, are as follows, those words of the act of 1883 which are omitted in the act of 1890 being

printed in italics, and the new words of the existing act being inclosed in brackets:

"(352) All wools, hair of the *alpaca, goat,* [camel, goat, alpaca] and other like animals shall be divided, for the purpose of fixing the duties to be charged thereon, into the three following classes:

"(353) Class One—*Clothing Wools.* That is to say, merino, mestiza, metz, or metis wools, or other wools of merino blood, immediate or remote. Down clothing wools, and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two and three.

"(354) Class Two—*Combing Wools.* That is to say, Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used; and also *all* hair of the *alpaca, goat,* [camel, goat, alpaca] and other like animals.

"(355) Class Three—*Carpet Wools and Other Similar Wools. Such as* [That is to say] Donskoi, native South American, Cordova, Valparaiso, native Smyrna, [Russian camel's hair,] and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere."

Where Mr. Justice Gray's opinion as reported contains a semicolon in paragraph 354 (377), the statutes as printed contain merely a comma. Attention is also called to the fact that there is a comma between the words "alpaca" and "goat," a matter which will be seen to have some significance.

Under the act of 1883, wools of the value of the hair here in question, namely, 10 cents a pound, were dutiable at 10 cents, if belonging to classes 1 or 2, and 2½ cents if belonging to class 3.

The collector classified this hair as goat hair under paragraph 354. The importers claimed that it was not goat hair under this paragraph, because it could not be combed within the commercial meaning of that term, and therefore insisted that it properly belonged to the following paragraph of the free list:

> Par. 717. Hair, horse or cattle, and hair of all kinds, cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially enumerated or provided for in this act; * * *

The history of the statutes *in pari materia* prior to that of 1890 is given as follows by Mr. Justice Gray (*United States* v. *Hopewell*, 5 U. S. App., 137, 147–8).

> By the tariff acts of 1861 and 1864, "all wool unmanufactured, and all hair of the alpaca, goat, and other like animals, unmanufactured," was subject to a duty, varying according to the value of the article. The duties imposed by the act of 1861 were 5 per cent ad valorem if the value was less than 18 cents a pound, 3 cents per pound if the value was more than 18 and not exceeding 24 cents a pound, and 9 cents per pound if the value was more than 24 cents a pound. The act of 1864 imposed duties of 3 cents per pound if the value was 12 cents or less a pound, and an increasing scale of duties per pound as the value was greater, and also, if the value exceeded 24 cents a pound, 10 per cent ad valorem. Acts of March 2, 1861, c. 68, § 12 (12 St., p. 183); June 30, 1864, c. 171, § 4 (13 St., p. 206).

> The tariff act of 1867 (reenacted in the Revised Statutes), and the act of 1883, divided "all wools, hair of the alpaca, goat, and other like animals" into three classes; "for the purpose of fixing the duties to be charged thereon," and those acts did not substantially differ from each other, or from the earlier acts, in any other particular bearing on this case except in the amount of the duties imposed. The act of 1867 imposed on "wools of the second class, and upon all hair of the alpaca, goat, and other like animals," the value of which was 32 cents or less a pound, a duty of 10 cents per pound and also 11 per cent ad valorem, and if the value was greater, a duty of 12 cents per pound and 10 per cent ad valorem. The act of 1883 differed only in substituting "thirty" for "thirty-two," and in omitting the additional ad valorem duty. Act of March 2, 1867, c. 197 (14 St., p. 559); Rev. St., § 2504, Schedule L, pp. 470, 471; act of March 3, 1883, c. 121, § 6 (22 St., p. 508).

The history of the interpretation of these statutes by the courts and Departments is given as follows by Mr. Justice Gray (*United States* v. *Hopewell*, 5 U. S. App., 137, 148–150):

> The construction of the acts of 1867 and 1883 was by no means so clear or so well settled as to afford a safe guide in the decision in this case. Whether those acts are considered by themselves, or in connection with the earlier legislation, there is certainly strong ground for the argument that the titles "Clothing Wools," "Combing Wools," and "Carpet Wools and Other Similar Wools," were inserted by way of convenient classification only, and not by way of description or definition of the nature or use of the articles ranged under any class, and that Congress did not intend to make any kind of goat's hair free. The

only legal opinions cited at the bar (besides that of the circuit court in the present case) in favor of the opposite view, were given under the act of 1883, and consist of two rulings, no reasons for which are reported, of Judge Butler, district judge for the eastern district of Pennsylvania—the one in *United States* v. *McNeely*, referred to in Treasury Decisions of 1887 (No. 7999), and the other in *Dobson* v. *Cooper*, 46 Fed. Rep., 184; and an opinion of the Attorney General to the Secretary of the Treasury, January 15, 1887, proceeding upon the misconception that the words "alpaca, goat," in the act of 1883, described, not two animals, but one only, an "alpaca goat," whereas the alpaca is of the llama tribe, and more akin to the camel than to the goat; and upon the consequent misconstruction that the whole clause included only animals producing hair or wool like said "alpaca goat." 18 Op. Attys. Gen., 527. The rulings of the Treasury Department upon the extent of the second class of wools and hair, under the acts in force from 1867 to 1890, were varying and contradictory. Under the act of 1867, rulings were made that some kinds of goat's hair, not fit for combing, did not come within class 2. Treasury Decisions Nos. 4108, 5743, 6707. And it was consequently assumed, in the tariff compilation reported by a committee of the Senate, January 7, 1884, that "goat's hair, unfit for combing or weaving," and "goat's hair, common," as well as camel's hair, were not dutiable under the act of 1883. 48th Cong., 1st sess., Senate Report No. 12, p. 108. Yet in 1885 and 1886 it was repeatedly ruled by Assistant Secretary Fairchild that, by the clear words of Schedule K of the act of 1883, all goat hair was dutiable at the same rate as wools of the second class. Treasury Decisions of 1885 and 1886, Nos. 6998, 6999, 7544, 7614. The subsequent ruling

of Secretary Manning to the contrary, appears to have been based on the opinions of Judge Butler and of the Attorney General, above mentioned. Treasury Decisions of 1887, No. 7999.

Dobson v. *Cooper*, 46 Fed. Rep., 184, quoted in Mr. Justice Gray's opinion, is the case at bar; the Federal Reporter containing a copy of the charge as incorporated in the present record. The opinion in the Hopewell case reversed a decision of Judge Colt (*In re Chase*, 48 Fed. Rep., 630) and sustained the decision of the Board of General Appraisers, who had, in a careful opinion by Appraiser Somerville (formerly chief justice of Alabama) passed similar criticism upon the Attorney General's opinion. (Syn. Dec. 10727.)

The interpretation given by the circuit court of appeals to the act of 1890 was as follows, quoting again from Mr. Justice Gray's opinion in *United States* v. *Hopewell* (5 U. S. App., 137, 146–7, 150):

> The facts found in the record, and on which this case must be decided, are that the wools specified in class 2, as well as the hair of the camel and of the alpaca, are all fit, adapted, and used for combing purposes; that there are breeds of goat, such as the Cashmere and the Angora, which produce hair fit for combing purposes, but that the goat hair in this case is common goat hair, unfit for combing purposes, and similar in its adaptability and use to the hair of horses and cattle.
>
> Upon the face of the act of 1890, and according to the clear and unambiguous meaning of its words, no wools, indeed, are included in class 2, except combing wools, or wools fit for combing; but there is no such restriction with regard to hair; and "hair of

the camel, goat, alpaca, and other like animals," is subjected to a uniform duty of 12 cents a pound, to whatever uses or purposes it is or may be adapted; and goat's hair, being thus specified as subject to a particular rate of duty, is not comprehended in the clause relating to hair "not specially provided for in this act." *Seeberger* v. *Cahn* (137 U. S., 95); *American, etc., Twine Co.* v. *Worthington* (141 U. S., 468). This is hardly denied by the appellees. But they contend that a different result must be reached by comparing this act with previous tariff acts, and with the practical construction which those acts had received. It will be convenient, therefore, briefly to review the legislation upon this subject.

* * * * * * *

But, whatever may have been the true construction of former acts, it is manifest that the provision on this subject in the existing tariff act must be construed, not as a mere revision or reenactment of prior ones, but as a new enactment, laying down its own rule, and clearly expressing its own meaning.

ARGUMENT.

I.

The case at bar comes before the court substantially as a case of first impression. There is no continuous course of judicial or departmental construction carrying force enough to guide the decision here.

Mr. Justice Gray in the Hopewell case discloses perhaps an individual opinion on the proper interpretation of the tariff of 1883, but refrains from expressing it.

Judge Butler gave no reasons for his holdings. Attorney General Garland, in his opinion of January, 1887, advising acquiescence in Judge Butler's first decision,

rested on the mistake of fact that an alpaca is a goat. Solicitor General Taft, in effect overruling his decision, directed this writ of error.

As to the Treasury decisions, the earlier ones were not carefully considered. The subject first received careful consideration in 1885 from Mr. Charles S. Fairchild, an able lawyer, then Assistant Secretary, who expressly overruled the previous practice and sustained the positions taken in this brief. (Syn. Dec., 6998, 6999.) Secretary Manning's subsequent action, reversing Mr. Fairchild and restoring the old practice, was based on Judge Butler's unreported and unexplained decision in the McNeely case, and on the Attorney General's opinion above referred to. (Syn. Dec., 7999.)

Departmental practice sometimes controls the meaning of a statute, but when the practice has not been uniform, it is without weight. (*Merritt* v. *Cameron*, 137 U. S., 542.)

II.

It is respectfully submitted that the meaning of the statute is perfectly plain and leaves no room for construction. The statute differentiates "wools" from "hair of the alpaca, goat, and other like animals." Classes 1 and 3 refer to wools alone. Class 2 contains some wools and "also *all* hair of the alpaca, goat, and other like animals." Paragraph 717 of the free list, upon which the importers rely, refers only to hair "not specially enumerated or provided for in this act." How can this cover any hair of the goat when "*all* hair of the * * * goat" is elsewhere enumerated?

In the absence of information as to the ground of Judge Butler's original decision, we are forced to believe that it must have been due to the same mistake of fact which afterwards occurred in the Department of Justice, namely, the supposition that an alpaca, like an Angora, was a kind of a goat. This impression seems to have remained in the mind of Judge Butler up to the time of the trial of the case at bar, if we may judge from the remarks, uncorrected, of the importers' attorney at page 69, and from the omission of the comma between "alpaca" and "goat" in the bill of exceptions at page 70.

He also relied to some extent upon the fact that goat hair is provided for in a paragraph headed "Combing Wools." This is not, however, always a safe reliance.

This subheading is analogous to the headings of the various schedules in the same act, of which Mr. Justice Brewer has said:

> All that was intended by these titles was a general suggestion as to the character of the articles within the particular schedule, and not any technically accurate definition of them. (*Hollender* v. *Magone*, 149 U. S., 586, 591.)

Thus, this very Schedule K is headed "Wool and Woolens," but contains articles of hemp, jute, flax, cotton, and other materials. Schedule J is headed "Hemp, Jute, and Flax Goods," but contains goods of various other materials. The slight value in the title of "Schedule H, Liquors," is adverted to in *Hollender* v. *Magone*, above quoted. "Schedule A, Chemical Products," is a still more remarkable illustration; it leads off with glue, fol-

lowed next by beeswax and gelatine, and includes soap of all kinds and even sponges, with a very great variety of articles not ordinarily considered to be produced by chemical processes.

Comparison of paragraphs 352 and 354 will show clearly, we believe, that the heading "Combing Wools" was not intended to cover anything in the paragraph beyond the words "by the terms herein used;" that the comma at that point is a mistake for a semicolon; and that the paragraph was intended to signify that all hair of the "alpaca, goat, and other like animals" was to be rated at the same figures as combing wools.

This is confirmed again by paragraph 358, which expressly separates these hairs from the combing wools:

> Wools of the second class *and all* hair of the alpaca, goat and other like animals, the value whereof * * * shall be 30 cents or less per pound, 10 cents per pound.

Following through the schedule, it will be seen that this animal hair is nowhere considered to be wool of any class, but it is considered necessary to separately mention it at every point. (Paragraphs 363, 365, 366, 367, 368.)

The importing interests have recently, under the tariff of 1894, taken a position diametrically opposite to that which was taken in the present case. The act of 1894 gives as the title of Schedule K "Wool and Manufactures of Wool." It contains a number of paragraphs relating to articles "made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals" [the word "like" being now dropped in this

clause]. The rates of duty are very much reduced from those of the prior tariff, and the last clause of the schedule reads as follows:

> Par. 297. The reduction of the rates of duty herein provided for manufactures *of wool* shall take effect January 1, 1895.

The act, except where otherwise provided, went into effect immediately after its passage, August 28, 1894. The importing interests claimed that, notwithstanding the title of the schedule, the reduced rates of duty on hair goods went immediately into effect upon the passage of the act; and this claim was sustained by the Department of Justice in an official opinion, partly based on *Hollender* v. *Magone*, above cited. (Printed in Syn. Dec., 15346, Oct. 9, 1894.)

The importers seem to have pressed the argument that rating this cheap goat hair under class 2 would be a hardship, and would practically prohibit its importation. This is a question of public policy. Perhaps Congress does not care to encourage the importation of articles used only to enable Philadelphia manufacturers to adulterate their carpets. At any rate, such arguments are to be addressed to Congress, and the opinion of Congress is conclusive; and, as bearing upon public policy, we are permitted to examine action subsequently taken by Congress in the premises. (See *Seeberger* v. *Hardy*, 150 U. S., 420, 423–4.) Examining the corresponding provisions of the act of 1890, as the court did in the case just cited, we find that Congress deliberately and most unmistakably evinced an

intent to class these varieties of hair in the same class with combing wools, whatever might be the result in encouraging or prohibiting their importation.

III.

For the reasons above stated, it is respectfully submitted that the first refusal to charge was erroneous.

A fortiori the third refusal to charge was erroneous. Here the court refuses to instruct the jury to find for the defendant, even if the article in suit is *Angora* goat hair.

Even if the alpaca be a goat—even if the comma should be omitted and the statute read as Judge Butler and Attorney General Garland read it, as including only the "alpaca goat and other like animals"—still the Angora goat is clearly within its meaning. Reference to the standard dictionaries and encyclopædias will show that the hair of the Angora goat, like that of the alpaca, is similar in nature to wool. It is included within the definition of wool in the dictionaries, although called hair and distinguished from wool in the statute. This is recognized elsewhere by the statute itself (Par. 719); it is maintained by the Treasury Department (Syn. Dec., 9810); and it does not appear to have been disputed by the importers in this case. It does not appear to have been denied by them that if the hair were from the Angora goat, and if it were long enough and in good enough condition to be combed, it would come properly under class 2 of Schedule K. Nor can this be disputed on the present record. The goods were actually classified by the collector as coming from a "like animal," and his finding of

similarity thus made is correct until overthrown by evidence; the presumption of the correctness of the collector's decisions applying to decisions upon the question of similarity (*Herrmann* v. *Robertson*, 152 U. S., 521, 523), as well as upon other points (*Erhardt* v. *Schroeder*, 155 U. S., 124; *Arthur* v. *Unkart*, 96 U. S., 118).

The importers' position, as we understand it, is not that the Angora goat is not a "like animal" within the meaning of this paragraph, as construed by them, but that the hair in question being short and also injured by chemical treatment, so that it is of no more value than the hair of the ordinary goat, it is to be read out of the paragraph.

It is respectfully submitted that the dutiability of the hair depends solely upon the species of animal from which it is pulled or clipped. If the animal is one of those described in paragraph 354, then "all" of its hair comes within that paragraph, whatever its length, fineness, physical characteristics, or condition when imported.

IV.

The charge of the court makes the *commercial designation* of the article the main subject for the jury to consider. On this point the court takes two positions, which are respectfully submitted to be untenable: first, that the phrase "hair of the * * * goat" is one of those which can be subjected to evidence of commercial designation; second, that without any evidence whatever that there actually is any peculiar commercial meaning for these words, nevertheless proof that there is a peculiar commercial usage of the term "common goat hair" takes articles so termed out of the paragraph.

It is instructions 1 and 2, as above numbered, which we question here. The other three relate to the commercial meaning of the word "combing" in the phrase "combing wool." We do not dispute the proposition that if it is necessary for hair to be "combing wool" or "combing hair," to come within the meaning of this paragraph, then commercial usage is the test of combability.

Instructions 1 and 2, however, are unqualified by any proviso concerning combability. That this is intentional and not accidental is shown by instruction 3.

In these first two instructions the court directs the jury to find a verdict not only if the hair is known as "cattle hair" but even where it is known to the trade as "common goat hair." The question thus presented is: Is there anything in paragraph 354 which justifies excluding from its provisions "hair of the * * * goat" simply because this hair is commercially termed "common goat hair?"

We respectfully submit that there is not. There is no such thing mentioned anywhere in the tariff act as "common goat hair." There is, therefore, no relevancy in testimony as to the commercial meaning of that phrase. There is no precedent in this court for such proposition. The only case that we have been able to find which bears any resemblance to it is *Arthur* v. *Morrison*, 96 U. S., 108. In that case certain veils were held not to be "silk veils," but only "manufactures * * * of which silk is the component material of chief value," because they were commercially known as "crape veils." It appeared that they were composed of silk with an infusion of some resinous substance which changed the

appearance of the article. While this infusion of resin may have been trifling, it was shown that it had the effect in commercial language of constituting an article which was not considered to be silk. It was shown that crape not only never was called silk, but was named in contradistinction to silk. There is no suggestion in this record that "common goat hair" is considered not to be goat hair, but something different. The distinction indicated by the court in instructions to the jury is not a distinction between common goat hair and goat hair, but a distinction between common goat hair and combing hair.

Moreover, "hair of the * * * goat" is a term of description of such a nature that it is an exception to the general rule admitting evidence of commercial designation. Besides the specific articles or groups of articles whose names are used by Congress in their trade signification, it has always been recognized that there are words used in the tariff acts in a general sense to cover large classes of articles, words which are to be interpreted according to their ordinary English meaning. The border line between the specific terms which are subject to the mercy of expert testimony and the general terms which are not subject thereto, is sometimes difficult to locate; but the fact that there is such a border line is well settled, and has lately been recognized by this court in *Cudworth-ader* v. *Zeh* (151 U. S., 171, 178), in the following language:

> In *Barber* v. *Schell* (107 U. S., 617, 621), the words held not to be affected by commercial usage were "all manufactures composed wholly of cotton, which are bleached, printed, painted, or dyed."

> * * * That designation, as observed by Mr. Justice Blatchford, speaking for this court and following the decision of Mr. Justice Nelson in *Reimer* v. *Schell* (4 Blatchf., 328), was a designation of articles by special description of quality or material as contradistinguished from designation by a commercial name.

A recent instance under this same schedule of the tariff act is *Maygone* v. *Luckemeyer* (139 U. S., 612, 614). In that case the question was whether certain articles within the meaning of the tariff act were "composed *wholly* of wool." It appeared that the goods were 98% wool and 2% cotton; that the cotton was introduced for the purpose of evading the tariff laws; that the cotton could be discovered only by chemical analysis; and that in appearance, texture, quality, and use the goods were indistinguishable from all-wool goods. The question arose whether evidence was admissible that the goods were commercially known as all wool. Mr. Justice Blatchford, delivering the opinion of the court, said:

> It is assigned for error that the court sustained an objection to a question put by the defendant to a witness as to whether the goods in question were bought and sold in this country as all-wool goods. The objection was made on the ground that the question was irrelevant. We think that the question was properly excluded.

It also appeared that the court refused to charge the jury to find a verdict for defendant if the articles in question were "known in trade and commerce as all-wool fabrics." Refusal so to charge was held not to be error.

The dissent of Justices Gray and Brown in this case was upon another point. (See also *Newman* v. *Arthur*, 109 U. S., 132; *Schmieder* v. *Barney*, 113 U. S., 645; *Marcel* v. *Merritt*, 116 U. S., 11.)

Another well-known instance is the "wearing apparel" case of *Maillard* v. *Lawrence* (1 Blatchf., 504, 16 How., 251), as recently interpreted by this court in *Cadwalader* v. *Zeh* (151 U. S., 171, 176–7), where in the words of Mr. Justice Nelson, quoted and approved by Mr. Justice Gray:

> Congress intended to depart from the commercial designation as the test to determine the description within which the duty should or should not be charged, and to leave such determination to the test of the actual use of the article.

The latest instance is the china and marceline case. (*Hartranft* v. *Meyer*, 149 U. S., 544.) The instructions refused by the court are stated in the dissenting opinion of Mr. Justice Brewer at page 548. The court held that the question whether the inside lining of a hat is a *trimming*, within the hat-trimming statute, is not one to be settled by evidence of commercial usage. The requests thus ruled out were not ruled out on the ground that they called for the commercial usage of 1883, for that is the date to which the inquiry must turn, by well settled principles. (*Curtis* v. *Martin*, 3 How., 106, 110; *Rossmann* v. *Hedden*, 145 U. S., 561, 569; *Cadwalader* v. *Zeh*, 151 U. S., 171, 179.)

The rules concerning evidence of commercial designation are now well settled. The general rule is stated in *Cadwalader* v. *Zeh* (151 U. S., 171, 176) to be that the

commercial meaning prevails "unless Congress has clearly manifested a contrary intention." To bring the case within the rule a commercial usage must be affirmatively proved (*Swan* v. *Arthur*, 103 U. S., 597); and it must be uniform and definite, like other usages. (*Maddock* v. *Magone*, 152 U. S., 368.) Cases which have been held exceptions, because Congress did manifest a contrary intention, may be grouped as follows: First, cases where the law uses "words which everyone understands, and which, unless taken in the ordinary sense, would mislead the whole community, and can not therefore be supposed to be intended in any other sense unless there was something to indicate such intention." (*Hedden* v. *Richard*, 149 U. S., 346, 349); second, cases where the statute by internal evidence in some other way indicates that the words are not to be taken in any technical meaning (*Magone* v. *Heller*, 150 U. S., 70, 73–4; *Berbecker* v. *Robertson*, 152 U. S., 373, 376; see also *Smith* v. *Townsend*, 148 U. S., 490, 499–500); third, cases where, as above shown, the act uses words descriptively and not denominatively. To this last class it is respectfully submitted that the words "hair of the * * * goat" belong.

Moreover, a technical usage must not be too diametrically opposed to the plain meaning of the English language. (*Lutz* v. *Magone*, 153 U. S., 105, 108–9.) It must be reasonable. (*United States* v. *Buchanan*, 8 How., 83, 102.) When the statute says "hair of the goat," it is a considerable stretch of interpretation to allow traders to withdraw the article from its statutory classification simply by calling it "hair of the cow" or "cattle hair."

V.

It is respectfully submitted that the exception at pages 13–14 is well taken. It is not entirely clear whether the evidence related to the articles in suit or to the mohair noils. However this may be, the rulings of subordinate customs officials at the port of Philadelphia upon six importations not involved in the case at bar, although made by the same person, are certainly not enough to establish a Treasury practice binding upon the Government, even if departmental practice is a matter to be proved and submitted to the jury rather than a matter to be reserved for judicial notice by the court. The rulings which are the best if not the sole evidence of such practice may certainly be judicially noticed (*United States* v. *Bailey*, 9 Pet., 238, 255–6; *Heath* v. *Wallace*, 138 U. S., 573, 580, 584), and, we believe, have been frequently so noticed in customs cases. But certainly proof can not be taken for the jury about matters which the court knows judicially. True testimony would be a waste of time. And can the court properly allow a case to go the jury on testimony which it *judicially* knows to be false? (See *Taylor* v. *Barclay*, 2 Sim., 213, 220–1.) Whatever testimony is taken is to refresh the court's recollection (*Jones* v. *United States*, 137 U. S., 202, 216), and therefore testimony offered may be excluded in the court's discretion, if it is already sufficiently informed.

It is respectfully submitted that the judgment should be reversed.

EDWARD B. WHITNEY,
Assistant Attorney-General.

157-148

Office Supreme Court, U. S.
FILED.
JAN 24 1895
JAMES H. McKENNEY,

Case No. 14059

IN THE

Supreme Court of the United States

October Term, 1894

THOMAS V. COOPER, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA
Plaintiff in Error

vs.

JOHN DOBSON, *et al.*
Defendants in Error

No. 179

In Error to the Circuit Court of the United States
for the Eastern District of
Pennsylvania

BRIEF FOR DEFENDANTS IN ERROR

JOSEPH P. McCULLEN
THOMAS EARLE WHITE
RICHARD P. WHITE
for Defendants in Error

IN THE

Supreme Court of the United States,

October Term, 1894. No. 179.

THOMAS V. COOPER, Collector of Customs for the District of Philadelphia,
Plaintiff in Error,

vs.

JOHN DOBSON, *et al.*,
Defendants in Error.

IN ERROR TO THE

CIRCUIT COURT OF THE UNITED STATES,

For the Eastern District of Pennsylvania.

BRIEF FOR DEFENDANTS IN ERROR.

Counter Statement of Facts.

John and James Dobson, defendants in error, and plaintiffs below, purchased abroad a large lot of what is really known as "*common hair*" or "*cattle hair*," and is sometimes called "*common* goat hair," being short hair usually containing *mixed hair* of *common goats* and *cattle*; sometimes having amongst it the hairs which are the *refuse* from combing hair of the Angora goat, and other animals, but all of it being short and unfit for combing, and used only as an adulterant.

There were seven importations of this purchase of hair. All the lots were similar in quality, each being a portion of the larger lot, the subject of one purchase; six of the lots were invoiced and passed as common goat, or cattle hair; but the seventh lot, the one in question, was appraised as "Angora Hair," class 2, "Combing Wools," and taxed ten cents per pound. (Record, p. 14.)

The Dobsons appealed unsuccessfully, paid the duty under protest, then brought this suit to recover the amount which they claimed was illegally charged against them, and in the Court below they recovered a verdict.

The Government contended in the Court below that the appraisement was justified by the concluding words of the clause of the Act of 1883, describing the goods to be classed as No. 2, Combing Wools, viz: "and also all hair of the Alpaca goat, and other like animals." The plaintiff below contended, however, that the class in question, as indicated by its title, was intended to cover *combing wools only*, and that the words, "hair of the Alpaca goat," etc., had reference only to the fleece in its natural condition, which is long, silky and specially adapted for combing, and not to short, refuse hair MIXED with *coar* and common goat hair which had none of the characteristics of Alpaca or Angora hair, which, in the language of the trade and according to commercial usage, had ceased to be so designated, and was now known only as "*cattle*" or "*common hair*," and which was unfit for combing.

Summarized, the charge of the learned trial Judge was, 1. That if the jury found the imported article to be that which is known commercially as *common hair* or as *common goat* or *cattle hair*, the verdict should be for the plantiffs. 2. That if it was not common hair, but still *not combing hair*, the verdict should be for the plaintiffs.

The jury found for the plaintiffs.

Argument and Authorities in Behalf of the Defendants in Error.

This case involves a question of construction of the Tariff Act of 1883. By that Act, Congress divided "wools and woolens" into three classes, as follows, viz:—

CLASS ONE:—"Clothing wools."

CLASS TWO:—"*Combing* wools."

CLASS THREE:—"Carpet wools and other similar wools."

The merchandise as to which the dispute arose was classed by the appraisers amongst the "combing wools" and it was so taxed, yet it was not only proven without contradiction, but upon the trial it was admitted by the Government, (Record, p. 66) that it was *not* combing wool, but that it was utterly unfit for combing and for any purpose for which combing wool is used. (Record, pp. 34, 35, 44, 46, 48, 54.)

The language of the Act of 1883 as to class 2, under which the merchandise was taxed, is as follows: "Class 2. Combing wools," "That is to say, Leicester, Cotswald, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also all hair of the Alpaca goat, and other like animals."

In designating what should be included in class 2, Congress was clear and explicit. The designation is *not wools generally*, but "*combing wools*," that is, wools of a *special kind*. The merchandise in question in this case was not combing wool, nor was it anything that could be used for combing purposes. It may be conceded, as the Government argues, and as was said by Mr. Justice BREWER in *Hollander* vs. *Magone*, 149, United States, 586, 591, in speaking of the headings of the various schedules in the Tariff Act, that, "All that was intended by these titles was a general suggestion as to the character of the articles within the particular schedule, and not any technically accurate definition of them." We may

admit that under Schedule H., "Liquors," there are many articles which may properly be included in addition to those which are generally spoken of as "Liquors," but, at least, they are *liquids* and are somewhat akin. And so as to Schedule K., the heading of which is "Wool and Woolens."—Herein are included as counsel for the Government argues, many articles, not strictly speaking, "wool and woolens," such as hemp, jute, flax, cotton, etc. This, however, does not affect the case of the defendants in error, for however broadly may be construed the *Schedule Title*—"Wool and Woolens"—it will be perceived that this is the case of a *sub-division* and of a *further classification* wherein Congress undertakes to *point out* the *particular kind* of article, *after having* already in the Schedule indicated the *general character* of the taxable article.

Whatever may be included under the general Schedule title "*K*," as "*Wools or Woolens*," before such articles can be included in Class 2 of that Schedule, they must be of a *particular kind*—that is of the "COMBING" kind—whether they be combing "*wools*" or combing "hair," or combing *something else*, they must have the quality of *combability*.

The merchandise in this case was admittedly not a combing wool, nor a combing hair, nor an article of the combing kind. *It was wholly unfit for combing purposes.*

The argument in behalf of the Government that under the language of the Act in said classification: "and also *all* hair of the alpaca goat and other like animals," the merchandise in this case was properly taxed, does not seem reasonable. As has been urged, the classification designates combing wools, or such articles as may be used for combing purposes. The hair of the alpaca in its natural state may be used for that purpose, so too, may that of the Angora goat and of other like animals when, in its natural long, silky condition, but, to argue that this meant to render dutiable *all goat hair*, whether fit for combing or not, would be certainly to stretch the law against the importer to an unreasonable extent.

If there be any ambiguity it is well settled that the law is to be construed in favor of the importer.

Powers vs. *Barney*, 5 Blatch, 202.
McCoy vs. *Hedden*, 38 Fed. 89.
Ross vs. *Fuller*, 17 Fed. 226.

In addition, it was shown that the merchandise in question was a *mixture*. *It was neither goat hair nor cattle hair*, but was a *mixture* of both, and therefore fell within the provisions of the free list, which reads (paragraph 717): "Hair, horse or cattle and *hair of all kinds*, cleaned or uncleaned, drawn or undrawn, but unmanufactured, *not specially enumerated* or *provided for in this Act*."

This was a *mixed* hair, *unfitted* for combing purposes and *not specially enumerated* or *provided for in the Act*.

It was shown upon the trial that, commercially, the merchandise in question, was known as "common hair," as "cattle hair," and as "common goat hair," as distinguished from the goat hair akin to wool which is used for combing purposes, and it was also shown that it was invoiced in this case as *white cattle hair*. (Record, pages 11, 13, 14).

It has been held repeatedly that in construing tariff acts, words are to be understood in their *commercial* signification when they have one, although they will be understood to mean in commerce what they mean in popular speech, unless the contrary be shown.

Arthur vs. *Morrison*, 96 U. S., 108.
Curtes vs. *Martin*, 3 How., 106.
Lee vs. *Lincoln*, 1 Story, 610.
In re 112 Casks of Sugar, 8 Peters, 277.
Roosevelt vs. *Maxwell*, 3 Blatch, 391.
U. S. vs. *Sarchet*, 1 Gilp., 273.
Fox vs. *Cadwalader*, 42 Fed., 209.
Stuart vs. *Maxwell*, 16 How., 163.
Weibacker vs. *Merritt*, 37 Fed., 85.
Junge vs. *Hedden*, 37 Fed., 197.

The case of *Arthur* vs. *Morrison*, *supra*, seems to be directly applicable, and in the effort to draw a distinction, the

counsel for the Government but indicates the important bearing of that authority upon the present case. In *Arthur* vs. *Morrison* this Court held that the designation "*silk veils*" did not make dutiable, veils *manufactured of silk* which were *known commercially* as "*crape veils*," and Mr. Justice HUNT, in delivering the opinion of the Court, said: "The question of law thus presented is, whether veils which are not commonly called 'silk veils' but *are veils manufactured of silk* and are *known commercially as 'crape veils'* and not otherwise, are liable to a duty of sixty per cent. The argument of the Government is that the statute in question is a comprehensive one intended to include *all articles made of silk*, or *of which silk is the component material* of chief value. * * * * *Silk veils*, it is said, *are specifically enumerated as being liable* to a duty of sixty per cent., and the articles in quetions *being veils of which the material is silk*, are within the enumerating clause of the statute. *If this were all, the argument would be a strong one.* BUT THE FACT THAT THE VEILS IN QUESTION ARE UNIVERSALLY KNOWN AND RECOGNIZED AMONG MERCHANTS AND IMPORTERS *as 'crape veils,'* and not otherwise, and are never called or known as silk veils, is to be taken into the account. *Although crape is shown to be a material of silk*, to which resinous substances has been applied, *neither the merchants nor the ordinary buyer understands them to be identical.* Neither the merchant, who should order a case of crapes, and receive one of silk goods, or who should order silk and receive crape, nor the individual purchaser who should order a dress of silk, and receive one of crape, or should order crape for mourning and received silk, would deem that the order had been properly filled. The general understanding concurs in this respect *with that of the trader and importer* and *must determine the construction to be given to the language of the statute. Especially should this view prevail as to laws made for the government of the importer.* His business is regulated by them: and it is but reasonable that, like the language of marine policies and the terms of the law-merchants, supposed

to be especially applicable to this class, these laws should be construed *as universally understood by the importer and trader.* Obsolete words or those whose meaning is differently understood by the writer and the reader, produce disorder and confusion. Importations from foreign countries are necessarily made with reference to the duties to be paid upon their entry into the ports of this country. If these are not reasonably uniform, and cannot be ascertained, the transaction of business will be impossible. No man can determine whether his venture will enrich him, or make him a bankrupt."

In this case, it was also in evidence that the custom house authorities had classified and passed as free, six importations, to the defendants in error, of the very merchandise from which the lot in question was taken (Record, 13–14.) The admission of this evidence is sought as ground for one of the Government's assignments of error. But a reference to page 13 of the printed record will show that the evidence was admitted and received before objection was raised. Even had the objection been made and the exception taken in time, it might well be argued that the evidence was clearly admissible to show that the commercial usage and interpretation was accepted as correct by the Government, and by the very officials who raised the question of taxability in this instance. In addition, this uniform conduct on the part of the custom house authorities in classifying and passing the article as free, was in accord with the decision of the Circuit Court for the Eastern District of Pennsylvania, in *United States* vs. *McNeeley*, referred to in Treasury Decisions, No. 7999, and followed similar rulings in Treasury Decisions, Nos. 4108, 5743 and 6707, as well as the opinion of the Attorney General (See Opinions of Attorney General, 527).

It is respectfully submitted, therefore, that the Record discloses no error, but that the rulings of the learned Court below were correct, and that the judgment should be affirmed.

JOSEPH P. McCULLEN,
THOMAS EARLE WHITE,
RICHARD P. WHITE,
Attorneys for Defendants in Error.